



# California Regulatory Notice Register

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JULY 25, 2008

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.*

### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

#### CONFLICT-OF-INTEREST CODES

##### AMENDMENT

STATE AGENCY: Department of Rehabilitation  
MULTI-COUNTY: M-S-R Public Power Agency  
San Joaquin Valley Unified Air  
Pollution Control District

A written comment period has been established commencing on **July 25, 2008** and closing on **September 8, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested per-

son, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **September 8, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

#### EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

#### CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED CONFLICT OF  
INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**TITLE 4. CALIFORNIA HORSE  
RACING BOARD**

**CALIFORNIA HORSE RACING BOARD  
TITLE 4, CALIFORNIA CODE OF  
REGULATIONS**

**NOTICE OF PROPOSAL TO ADD  
RULE 1689.2, SAFETY REINS REQUIRED**

The California Horse Racing Board (Board) proposes to add the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The Board proposes to add Rule 1689.2, Safety Reins Required. The proposed addition of Rule 1689.2 would provide that no jockey or apprentice jockey shall ride in a race, nor shall any person exercise, gallop, breeze, work out or ride a racehorse on the grounds of a facility under the jurisdiction of the Board unless the racehorse is equipped with safety reins.

**PUBLIC HEARING**

The Board will hold a public hearing starting at **9:30 a.m., Thursday, September 18, 2008**, or as soon after that as business before the Board will permit, at the **Los Angeles County Fair Fairplex, 1101 West McKinley Avenue, Pomona, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

**WRITTEN COMMENT PERIOD**

Any interested persons, or their authorized representative, may submit written comments about the pro-

posed regulatory action to the Board. The written comment period closes at **5:00 p.m., on September 8, 2008**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Colleen Germek, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone (916) 274-6049  
Fax: (916) 263-6042  
E-Mail: [colleeng@chrb.ca.gov](mailto:colleeng@chrb.ca.gov)

**AUTHORITY AND REFERENCE**

Authority cited: sections 19440 and 19504, Business and Professions Code. Reference: section 19504, Business and Professions Code.

Business and Professions Code sections 19440 and 19504 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Section 19504 Business and Professions Code.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19504 provides that should the Board determine that the use of safety reins would provide greater protection for jockeys and exercise riders than conventional reins, it shall adopt a regulation mandating the use of approved safety reins whenever a racehorse is ridden at a racetrack. The Board may phase in the use of safety reins, but the Board shall not permit the use of conventional reins in a pari-mutuel race for longer than 18 months following the adoption of the regulation.

The Board, at its June hearing regarding mandating the use of safety reins, determined that the use of safety reins provides greater protection for jockeys and exercise riders than conventional reins. The proposed addition of Rule 1689.2, Safety Reins Required, will bring the Board into compliance with the provisions of Business and Professions Code section 19504, by requiring the use of safety reins on racehorses ridden, exercised, galloped, breezed or worked out on the grounds of a facility under the jurisdiction of the Board. Safety reins, defined pursuant to Business and Professions Code sec-



tion 19504(d), are a rein within a rein. Conventional reins are made of leather or nylon. They attach to the ring above the bit, and provide jockeys and riders with control of the horse. When reins break, control is lost. With safety reins, a nylon cord is stitched into the traditional leather or nylon reins during the manufacturing process, and the safety cord attaches to the bit independently of the conventional reins. Should the outer leather or nylon reins break during a workout or race, the jockey or rider should be able to maintain control using the safety cord. When considering the addition of Rule 1689.2, the Board determined that a phase in period of 12 months would allow trainers time to replace conventional reins with safety reins, and not cause a financial burden of having to replace conventional reins all at once, as conventional reins have a useful life of roughly 24 months at the racetrack. Trainers could replace conventional reins with safety reins as needed over the 12-month period.

Subsection 1689.2(c) exempts the standardbred industry from the regulation. This was done for purposes of clarity, as Business and Professions Code section 19504 makes no reference to harness drivers. The law specifies that the Board shall determine whether the use of safety reins would provide jockeys and exercise riders greater protection from accidents and injuries than conventional reins.

#### DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1689.2 will not have a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board has determined that a representative private person or business would incur an additional cost of between \$10 and \$15 dollars per set of safety reins, over the cost of a set of conventional reins, in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1689.2 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate exist-

ing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1689.2 does not affect small businesses because horse racing is not a small business under Government Code section 11342.610.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

#### CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Colleen Germek, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 274-6049  
E-mail: [colleeng@chrb.ca.gov](mailto:colleeng@chrb.ca.gov)

If the person named above is not available, interested parties may contact:

Harold Coburn, Regulation Analyst  
Policy and Regulation Unit  
Telephone: (916) 263-6397

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Colleen

Germek, or the alternative contact person at the address, phone number or e-mail address listed above.

#### AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

#### AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Colleen Germek at the address stated above.

#### BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: [www.chrb.ca.gov](http://www.chrb.ca.gov).

### **TITLE 5. STATE BOARD OF EDUCATION**

#### **NOTICE OF PROPOSED RULEMAKING AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5 REGARDING FOLLOWUP ADOPTIONS**

[Notice published July 25, 2008]

**NOTICE IS HEREBY GIVEN** that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

#### PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing beginning at **10:00 a.m. on September 8, 2008**, at 1430 N Street, Room 1101, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Strain, Regulations Coordinator  
LEGAL DIVISION  
California Department of Education  
1430 N Street, Room 5319  
Sacramento, California 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to [regcomments@cde.ca.gov](mailto:regcomments@cde.ca.gov). Comments must be received by the Regulations Coordinator prior to **5:00 p.m. on September 8, 2008**.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposal.

#### AUTHORITY AND REFERENCE

Authority: Section 60206, Education Code.

Reference: Sections 60200 to 60227, Education Code; 5 CCR, commencing with section 9510.



## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The SBE proposes to add section 9517.1 to the *California Code of Regulations (CCR)*. This section concerns the adoption of instructional materials for California public schools in grades kindergarten through grade 8 (K–8) and the implementation of follow-up adoptions.

The purpose of the regulations is to establish the process for follow-up adoptions and the fee to be paid by publishers and manufacturers for participation in follow-up adoptions of instructional materials for grades K–8.

EC sections 60200(a) and (b) call for adoptions to occur not less than two times every six years for language arts, mathematics, science, and social science and not less than two times every eight years in other subject areas. The first instructional materials adoption following the SBE adoption of new evaluation criteria is termed a “primary adoption” and creates a new adopted list of instructional materials. Any additional adoption conducted during the six- or eight-year period is termed a “follow-up adoption” and is conducted using the same evaluation criteria as the primary adoption. A follow-up adoption adds instructional materials to the existing adoption list for the remainder of the list’s term.

When the CDE sustained significant budget cuts in 2003, the follow-up adoptions scheduled for 2003 were postponed. The CDE was provided with statutory relief with the passage of SB 1058, Chapter 806, Statutes of 2003, which authorized the CDE to assess publisher fees to cover the costs associated with follow-up adoptions. The CDE conducted follow-up adoptions in 2005 for mathematics, reading language arts, and Foreign Language. However, the authority to assess publisher fees to support follow-up adoptions expired on January 1, 2007.

The CDE has once again been provided with statutory authority to collect a fee from publishers of instructional materials to participate in a follow-up adoption with the passage of SB 734, Chapter 476, Statutes of 2007.

The proposed regulations to implement SB 734 provide for CDE to charge publishers a fee of \$5,000 per grade level submitted for review. The regulations identify the necessary documentation a publisher must submit to CDE to demonstrate they are a “small publisher” in accordance with EC section 60227(f)(3); this designation qualifies them for a reduction in the otherwise required fee.

Experience with the 2005 follow-up adoptions is the basis for the proposed fee. It is designed to be partial reimbursement for costs, and not result in any profit (fee revenue in excess of costs) from programs submitted

for follow-up adoption. The proposed fee reflects savings that are likely because training/re-training travel and meeting costs should be substantially lower than for a primary adoption.

## DISCLOSURES REGARDING THE PROPOSED REGULATION

*The SBE has made the following initial determinations:*

Mandate on local agencies or school districts: None

Cost or savings to state agencies: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed amendments to the regulations positively affect small businesses because the regulations allow for reduced fees.

## CONSIDERATION OF ALTERNATIVES

The SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## CONTACT PERSONS

Inquiries concerning the content of this regulation may be directed to:

Jean James, Education Program Consultant  
California Department of Education  
Instructional Resources Unit  
1430 N Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814  
Telephone: 916-319-0444  
E-mail: [jjames@cde.ca.gov](mailto:jjames@cde.ca.gov)

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916-319-0860.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

The SBE has prepared an initial statement of reasons for the proposed regulation and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/re/lr/rr>.

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Regulations Coordinator.

#### REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Jean James, Instructional Resources Unit, 1430 N Street, Sacramento, CA, 95814;

telephone, 916-319-0444. It is recommended that assistance be requested at least two weeks prior to the hearing.

### TITLE 5. SUPERINTENDENT OF PUBLIC INSTRUCTION

#### NOTICE OF PROPOSED RULEMAKING AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING RECORDS RETENTION

[Notice published July 25, 2008]

**NOTICE IS HEREBY GIVEN** that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

#### PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SSPI, will hold a public hearing beginning at **1:30 p.m. on September 16, 2008**, at 1430 N Street, Room 1801, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Strain, Regulations Coordinator  
LEGAL DIVISION  
California Department of Education  
1430 N Street, Room 5319  
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to [\*\*regcomments@cde.ca.gov\*\*](mailto:regcomments@cde.ca.gov). Comments must be received by the Regulations Coordinator prior to **5:00 p.m. on September 16, 2008**.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

## AUTHORITY AND REFERENCE

Authority: Section 35253, Education Code.

References: Sections 430, 35253 and 35254, Education Code; Section 6252, Government Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Education Code Division 3, Chapter 2, Article 8, commencing with section 35250 requires the governing board of every school district to keep certain records and reports. Education Code section 35253 authorizes the SSPI to adopt regulations that govern the destruction of records that are not otherwise protected by law. The current regulations governing the destruction of records (Title 5 CCR Chapter 16, Subchapter 2, commencing with section 16020) are outdated and unduly burdensome in light of the overwhelming amount of electronic records accumulated by a school district. Therefore, new regulations are required to address the retention of records by a school district.

## DISCLOSURES REGARDING THE PROPOSED ACTION

*The SSPI has made the following initial determinations:*

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary costs or savings imposed on local educational agencies: None

Costs or savings in federal funding to the state: None  
Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SSPI is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed amendments to the regulations do not affect small businesses because the regulations apply only to school districts and not to business practices.

## CONSIDERATION OF ALTERNATIVES

The SSPI must determine that no reasonable alternative he considered or that has otherwise been identified and brought to his attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## CONTACT PERSONS

Inquiries concerning the content of this regulation should be directed to:

Jill Rice, Deputy General Counsel  
Legal Office  
California Department of Education  
1430 N Street, Room 5319  
Sacramento, CA 95814  
Telephone: 916-319-0860  
E-mail: [jrice@cde.ca.gov](mailto:jrice@cde.ca.gov)

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916-319-0860.

## INITIAL STATEMENT OF REASONS AND INFORMATION

The SSPI has prepared an Initial Statement of Reasons for the proposed regulation and has available all the information upon which the proposal is based.

**TEXT OF PROPOSED REGULATION AND  
CORRESPONDING DOCUMENTS**

Copies of the exact language of the proposed regulation, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/rr/rr/rr/>.

**AVAILABILITY AND LOCATION OF  
THE FINAL STATEMENT OF REASONS  
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Regulations Coordinator.

**REASONABLE ACCOMMODATION FOR ANY  
INDIVIDUAL WITH A DISABILITY**

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Jill Rice, Legal Office, 1430 N Street, 5<sup>th</sup> Floor, Sacramento, CA, 95814; telephone, 916-319-0860. It is recommended that assistance be requested at least two weeks prior to the hearing.

**TITLE 8. WORKERS' COMPENSATION  
APPEALS BOARD**

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
WORKERS' COMPENSATION APPEALS  
BOARD**

**NOTICE OF PROPOSED RULEMAKING**

**RULES OF PRACTICE AND PROCEDURE**

**TITLE 8, CALIFORNIA CODE OF  
REGULATIONS, SECTIONS  
10300 THROUGH 10999**

**NOTICE IS HEREBY GIVEN** that the Workers' Compensation Appeals Board (hereafter, "WCAB") by

the authority vested in it under Labor Code section 5307 (see also, Lab. Code, §§ 133, 5309, 5708), proposes to amend, adopt, and repeal rules of practice and procedure in Title 8, Chapter 4.5, Subchapter 2 of the California Code of Regulations, commencing with section 10300.<sup>1</sup>

In accordance with Government Code section 11351, the WCAB is *not* subject to Article 5 (commencing with Government Code section 11346), Article 6 (commencing with Government Code section 11349), Article 7 (commencing with Government Code section 11349.7), or Article 8 (commencing with Government Code section 11350) of the rule-making provisions of the Administrative Procedures Act (APA), with the sole exception that section 11346.4(a)(5) [publication in the California Regulatory Notice Register] does apply to the WCAB. Instead, the WCAB's proposed amendments to its Rules of Practice and Procedure are being instituted pursuant to its rule-making power under Labor Code section 5307(a) (see also Lab. Code, §§ 133, 5309, 5708), subject to the procedural requirements of Labor Code section 5307.4. This Initial Statement of Reasons and accompanying Notice of Proposed Rulemaking have been prepared to comply with the procedural requirements of section 5307.4 and for the convenience of the regulated public to assist it in analyzing and commenting on this largely non-APA rulemaking process.

**PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the above noted subject on the following date:

**Date: Friday, September 12, 2008**

**Time: 10:00 a.m. to 5:00 p.m. or Conclusion of  
Business**

**Place: Hearing Room 9  
Hiram Johnson Building  
San Francisco Civic Center Complex  
Conference Center — Basement Level  
455 Golden Gate Avenue  
San Francisco, CA 94102**

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the Noon recess, no afternoon session will be held. The WCAB requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments.

<sup>1</sup> Existing WCAB rules that are not being proposed for amendment or repeal are intended to remain in full force and effect.



## AUTHORITY AND REFERENCE

The WCAB is undertaking this regulatory action pursuant to the authority vested in it by Labor Code section 5307(a), as well as sections 133, 5309 and 5708, to adopt regulations to implement, interpret and make specific various sections of the Labor Code.

## INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The WCAB proposes to add, amend, and repeal specific sections of its Rules of Practice and Procedure as set forth below.

Although there are a number of reasons for the changes to the WCAB's Rules, two major reasons stand out.

First, in 2002, the Legislature created the position of "Court Administrator" within the Division of Workers' Compensation (hereafter, "DWC") and gave the Court Administrator rule-making authority over certain elements of "district office procedure regarding trial level proceedings of the workers' compensation appeals board." (Lab. Code, § 5307(c).) Therefore, the WCAB is proposing to delete certain of its current rules, the subject matter of which would be covered by certain proposed Court Administrator regulations.

Second, the Budget Act of 2004 appropriated funds "for the development of a workers' compensation case management system." (Stats. 2004, ch. 208, Item 7350-001-0223(4), p. 592 (S.B. 1113 [appropriations bill].) Therefore, since 2004, DWC has been developing the Electronic Adjudication Management System (hereafter, "EAMS"), which is a computerized system that DWC will utilize to electronically store and maintain WCAB adjudication case files and to perform various case management functions. DWC has announced that Phase 1 of EAMS is scheduled to "go live" on August 25, 2008. Accordingly, some of the proposed changes or additions to the existing WCAB rules result from the impending implementation of EAMS.

### Section Amended: 10301.

Various subdivisions of section 10301 are renumbered so that the definitions remain in alphabetical order.

The definition of "Administrative Director" is amended to include a "designee" of the Administrative Director (hereafter, "AD"). This proposed change gives recognition to the fact that some actions performed under the AD's authority are actually performed by the AD's designees. The proposed change is consistent with numerous existing regulations regarding delegation of the AD's authority to his or her designees.

A definition of "adjudication file" (or "ADJ file") is added. This new definition is being proposed because

DWC will utilize EAMS not only to electronically store and maintain WCAB case files, but also to electronically store and maintain the files of ancillary units of DWC. The term "adjudication file" (or "ADJ file") will distinguish WCAB case file from the files of DWC ancillary units, such as those of the Disability Evaluation Unit (i.e., a "DEU file").

The definition of "Appeals Board" is amended to include the WCAB's Commissioners and Deputy Commissioners "individually," in recognition of the fact that, under both the Labor Code and the WCAB's current rules, some actions by the WCAB may be taken by a single Commissioner or Deputy Commissioner.

A definition "carve-out case" is added. The proposed definition is consistent with the provisions of Labor Code sections 3201.5 through 3201.9 relating to an alternative dispute resolution (ADR) system that supplements or replaces all or part of the dispute resolution processes contained in Division 4 of the Labor Code. The term "carve-out case" is informally used in the workers' compensation community, but it has never been formally defined.

A definition of the term "case opening document" is added. "Case opening document" is used in different places in the WCAB's proposed rules, but it is not elsewhere defined. A "case opening document" is any document that creates an adjudication case and invokes the WCAB's jurisdiction for the first time.

A definition of "Court Administrator" is added. "Court Administrator" is used in different places in the WCAB's proposed rules, but it is not elsewhere defined. The proposed definition tracks the statutory definition of "Court Administrator" contained in Labor Code section 110(f). However, the proposed definition would also include any "designee" of the Court Administrator, in recognition of the fact that some Court Administrator actions are actually performed by his or her designees.

The definitions of "Declaration of Readiness to Proceed" (DOR) and of "Declaration of Readiness to Proceed to Expedited Hearing" are amended. The proposed amendments strike the phrase "before the Workers' Compensation Appeals Board" from both definitions and instead substitute the phrase "at a district office." This is because "Workers' Compensation Appeals Board" is currently defined to include the Appeals Board, the Commissioners and the Deputy Commissioners. However, when a DOR or Expedited DOR requests a proceeding, the proceeding will not be conducted before the Commissioners or Deputy Commissioners of the Appeals Board at its headquarters in San Francisco. Rather, the proceeding will be conducted before a workers' compensation judge (hereafter, "WCJ") at a district office of the WCAB.

A definition of “district office” is added. “District office” is used throughout the WCAB’s rules, yet, it is nowhere defined. The proposal to define “district office” to mean “a location of a trial court of the Workers’ Compensation Appeals Board” gives recognition to the facts: (1) that the WCAB exercises judicial powers and, in legal effect, is a court; and (2) the “district offices” conduct trial level proceedings of the WCAB.

A definition for “document” is added. In light of EAMS, “document” needs to be defined to include an electronically filed document or an electronically scanned version of a paper document. Also, in light of EAMS, it needs to be emphasized that each separate medical report or other record “having a different author and/or a different date” is a different “document.” This is so that, when individual “documents” are scanned or otherwise inputted into EAMS, they can be separately identified by author and date and, therefore, they can be easily located.

A definition for “document cover sheet” is added. The “document cover sheet” is a Court Administrator form, used for EAMS, that will be placed on top of a document or set of documents being filed at one time in a specific case. The “document cover sheet” will identify the adjudication case(s) to which the document or documents relate, so that when the documents are scanned or otherwise inputted into EAMS, they are routed to the correct adjudication file(s).

A definition for “document separator sheet” is added. The “document separator sheet” is a Court Administrator form, used for EAMS, that will be (1) placed on top of each individual document, when one or more documents are being filed at the same time in the same case and (2) placed on top of each individual attachment to each document being filed, when an individual document has one or more attachments. Among other things, the “document separator sheet” will identify the title, the author, the date, and the type of each document and each attachment being filed. Thus, the “document separator sheet” will help ensure that, when individual documents are scanned into EAMS, they can be separately identified (and, therefore, easily located) within the EAMS adjudication file.

A definition for “Electronic Adjudication Management System” (EAMS) is added. EAMS is a computerized system that, beginning August 25, 2008, DWC will utilize to electronically store and maintain WCAB adjudication case files and to perform various case management functions. There are references to EAMS throughout the WCAB’s proposed new and amended rules and, therefore, it needs to be defined.

A definition for “fax” is added. Although this is a term commonly used by the general public, the definition that a “fax” is a document that has been “electroni-

cally served” helps to highlight the fact that documents are not to be “filed” with the WCAB by fax.

The definition of “[to] file” is amended. The proposed amendments change the phrase “case file” to “adjudication file,” consistent with the discussion of the phrase “adjudication file,” above. The proposed amendments also would (1) strike the phrase “Workers’ Compensation Appeals Board district office” and simply substitute the phrase “district office” and (2) strike the phrase “Workers’ Compensation Appeals Board adjudication file” and simply substitute the phrase “adjudication file.” The former phrase is redundant because “district office” will now be defined to mean “a location of the Workers’ Compensation Appeals Board.” The latter phrase is redundant because “adjudication file” will now be defined to mean “a case file within the jurisdiction of the Workers’ Compensation Appeals Board.”

The definition of “hearing” is amended. First, “lien conference” is added to the list of hearings, having been inadvertently omitted from the current definition (even though it is used in the current rules). Second, “hearing” is defined to mean various proceedings “at a district office or before the Appeals Board.” Although most “hearings” do take place before a WCJ at a district office of the WCAB, some hearings do take place directly before the Appeals Board.

The definition of “lien claimant” is amended to include “any person *or entity*” filing a lien. This change is necessary because incorporated and non-incorporated businesses and other organizations may file liens.

A definition for “lien conference” is added. Even though “lien conference” is used in the current rules, it is not currently defined. It would be defined to mean a proceeding held for the purpose of assisting the parties in resolving disputed lien claims or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a lien trial.

The definition of “mandatory settlement conference” (MSC) is amended to strike the phrase “before the Workers’ Compensation Appeals Board” because, in light of other definitions, this phrase is no longer necessary.

A definition of “optical character recognition form” (OCR form). This term is used in the new rules, but it is not elsewhere defined. OCR forms are a necessary element of EAMS. The OCR forms will be scanned with a flatbed scanner and then software will be used to recognize and digitize the printed or handwritten information on the forms. Printed or handwritten information entered in certain fields (i.e., lines or boxes) on the OCR forms will be extracted and entered into the corresponding data fields within EAMS.

The definition of “party” is amended. The amendment clarifies that “party” includes the injured em-



ployee, or the dependent(s) of a deceased employee, even if the employee or dependent was not the “applicant” (i.e., the person or entity filing the application for adjudication of claim). The amendment also provides that a “lien claimant” may become a “party” when the underlying case of the injured employee (or any dependent(s) of a deceased employee) has been “resolved” (which is somewhat broader than the current provision that the underlying case has been “settled by way of a compromise and release”).

The definition of “record of proceedings” is deleted because it is essentially duplicative of current Rule 10750 (and amended Rule 10750).

A definition of “venue.” “Venue” is used in various places in the current and proposed rules, but it is nowhere defined. It is now defined to mean the district office, as established by Labor Code section 5501.5 or 5501.6, at which any trial level proceedings will be conducted and from which any trial level orders, decisions, or awards will be issued.

Other amendments are made, but they involve only very minor non-substantive changes to currently existing definitions (i.e., the definitions of “priority conference” and “status conference”).

#### **Section Amended: 10302.**

Section 10302 is amended to substitute “workers’ compensation administrative law judges” and “presiding workers’ compensation administrative law judges” (hereafter, “PWCJs”) for, respectively, “referees” and “referees in charge,” which are no longer in use. The amendment also provides that WCJs and PWCJs may informally be referred to, respectively, as “workers’ compensation judges” and “presiding workers’ compensation judges,” to reflect short-hand custom and usage in the workers’ compensation community. Finally, the amendment establishes that pro tempore WCJs are included within the definition of WCJs.

#### **Section Repealed: 10306.**

Rule 10306, relating to the “Index of Cases,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of current Rule 10306 would be transferred to proposed Court Administrator Rule 10215.

#### **Section Amended: 10308.**

Rule 10308, relating to the “Official Address Record,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of current Rule 10308 would be transferred to proposed Court Administrator Rule 10217(a).

#### **Section Amended: 10324.**

Rule 10324, relating to “Ex Parte Communications,” is amended. Subdivision (a) is essentially identical to the first sentence of current Rule 10324. Subdivision (b)

provides that, when the WCAB receives an ex parte letter or other ex parte document, it shall serve the letter or document on all other parties, with an explanation that the letter or document was received ex parte. Subdivision (c) is identical to the second sentence of current Rule 10324. Subdivision (d) provides that, where a physician has been appointed by the WCAB, any communications by the parties to the appointed physician shall be made through the WCAB.

#### **Section Amended: 10346.**

Rule 10346, entitled “Assignment or Transfer of Cases,” is amended. It now provides that a PWCJ may utilize EAMS to assign cases. However, the provision that a PWCJ “may” utilize EAMS to assign cases makes it clear that this is a discretionary act, not a mandatory one.

#### **Section Repealed: 10347.**

Rule 10347, entitled “Assignment of Judges,” is repealed. Rule 10347 currently provides that, where practical, the WCJ assigned for trial should be different than any WCJ who conducted an MSC in the case. The current rule will not be workable under EAMS.

#### **Section Repealed: 10390.**

Rule 10390, relating to the “Place and Time of Filing Documents,” is repealed. Pursuant to Labor Code section 5307(c), some of the provisions of current Rule 10390 would be transferred to proposed Court Administrator Rules 10228 and 10230.

#### **Section Repealed: 10391.**

Rule 10391, relating to the “Filing of Copies of Documents,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of current Rule 10391 would be transferred to proposed Court Administrator Rule 10236.

#### **Section Repealed: 10392.**

Rule 10392, relating to the “Form and Size Requirements for Filed Documents,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of current Rule 10392 would be transferred to proposed Court Administrator Rule 10232.

#### **Section Repealed: 10395.**

Rule 10395, relating to the “Improper Filing of Documents,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of current Rule 10395 would be transferred to proposed Court Administrator Rule 10235.

#### **Section Repealed: 10396.**

Rule 10396, relating to the “Duty to Furnish Correct Address,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of current Rule 10395 would be transferred to proposed Court Administrator Rule 10217.

**Section Added: 10397.**

Rule 10397, entitled “Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation,” is added. Rule 10397 provides that an application for adjudication of claim, a petition for reconsideration, a petition to reopen, or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that: (1) the document is not filed in the proper office of the WCAB; (2) the document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or (3) the document has not been submitted with the required document cover sheet and/or document separator sheet(s), or has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information. However, such a document *may* be rejected for filing if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file. If the document is rejected under such circumstances, however, the Court Administrator will return the document to the filing party, notify the filing party of the discrepancy(ies), and give the filing party 15 days after service of the notice to correct the defect(s). If timely corrected, the document will be deemed filed as of the date it was originally submitted. Finally, proposed Rule 10397 would indicate that its provisions do not excuse non-compliance with the WCAB and the Court Administrator’s rules and will not preclude the imposition of sanctions under Labor Code section 5813 and Rule 10561. Rule 10397 is necessary so that documents subject to a statute of limitations or a jurisdictional time limitation are not rejected solely because of a systems requirement of EAMS.

**Section Amended: 10400.**

Rule 10400, currently entitled “Applications,” is amended. It is re-titled “Filing and Service of Applications.” Substantively, Rule 10400 specifies that a case opening compromise and release agreement, a case opening stipulation with requests for award, and a request for findings of fact under section 10405 are all “applications” for purposes of invoking the jurisdiction of the WCAB, however, none of those documents would be deemed “applications” for purposes of attorney’s fees under Labor Code section 4064(c). Also, Rule 10400 provides that, when an initial application is filed, the application will be assigned both an adjudication case number *and* a venue, which is necessary because, under EAMS, the venue will no longer be reflected in the case number. Further, Rule 10400 pro-

vides that, when an amended application is filed, the applicant shall indicate (in the appropriate box on the application form) that it is an “amended” application. Moreover, certain of the application filing provisions of current Rule 10500 are moved into Rule 10400, so that these related provisions are consolidated in a single section. Finally, with respect to these application filing provisions, Rule 10400 essentially takes the same approach as the last sentence of current Rule 10400 and the first paragraph of current Rule 10500, except there are some changes in light of EAMS and some other minor changes or clarifications.

**Section Added: 10403.**

Rule 10403, entitled “Application Required Before Jurisdiction Invoked and Before Compelled Discovery May Be Commenced,” is added. In essence, new Rule 10403 provides that the jurisdiction of the WCAB is invoked only by the filing of an application or other case opening document. Therefore, the pre-application assignment of a non-adjudication EAMS case number by an ancillary unit of DWC: (1) does not establish the jurisdiction of the WCAB and, therefore, does not permit the WCAB to conduct any pre-application hearings or issue any pre-application orders (including orders compelling medical evaluations); (2) does not toll the statute of limitations (except as provided in Labor Code section 5454); and (3) does not authorize the commencement of formal, compelled discovery using subpoenas or other process issued by or under the auspices of the WCAB. Rule 10403, however, does not preclude non-compelled pre-application medical evaluations or investigations.

**Section Added: 10409.**

Rule 10409, entitled “Venue,” is added. It provides that any person or entity filing an initial application (or other case opening document) must designate venue, in accordance with the provisions of Labor Code section 5501.5. It also establishes venue for the workers’ compensation claims of DWC employees.

**Section Amended: 10410.**

Rule 10410, currently entitled “Objection to Venue,” is amended. It is re-titled “Objection to Venue under Labor Code Section 5501.5(c).” Also, Rule 10410 makes it clear that it applies only to objections, made under Labor Code section 5501.5(c), to initial venue selections based on the applicant’s attorney’s principal place of business, made under Labor Code section 5501.5(c). Rule 10410 also provides, consistent with the language of Labor Code section 5501.5(c), that the 30-day time period for objecting starts running from the date that “notice of the adjudication case number and venue is *received*” by the objecting defendant. Further, Rule 10410 provides that if a defendant objects to venue, it must declare under penalty of perjury when it

received notice of the adjudication case number and venue.

**Section Amended: 10411.**

Rule 10411, currently entitled “Petition for Change of Venue,” is amended. It is re-titled “Petition for Change of Venue under Labor Code section 5501.6.” Rule 10411 clarifies that the section relates solely to a petition to change venue pursuant to Labor Code section 5501.6, as opposed to an objection to a venue designation pursuant to Labor Code section 5501.5. Rule 10411 also clarifies that a petition for change of venue is decided by the PWCJ (or the designee of the PWCJ) of the district office having venue, i.e., the petition is not decided by the PWCJ of the district office to which venue is sought to be changed.

**Section Amended: 10412.**

Rule 10412, currently entitled “Location of File After Venue Change,” is amended. It is re-titled “Proceedings and Decisions After Venue Change.” Rule 10412 provides that, when an order changing venue is issued, all further trial level proceedings shall be conducted at, and all further trial level orders, decisions, and awards shall be issued by, the district office to which venue was changed. The amendment is necessary because there will be no “physical” location of an electronic (paperless) adjudication case file residing within EAMS, i.e., the file exists only in cyberspace and there will be no physical transfer of a case file from one district office to another (with the exception of some “legacy” paper case files that existed before EAMS).

**Sections Repealed: 10414, 10415, and 10416.**

Rules 10414, 10415 and 10416 — entitled, respectively, “Declaration of Readiness to Proceed,” “Declaration of Readiness to Proceed to Expedited Hearing,” and “Objection to Declaration of Readiness” — are repealed. Pursuant to Labor Code section 5307(c), their provisions are transferred to Court Administrator Rules 10250 and 10251.

**Section Repealed: 10417.**

Rule 10417, entitled “Walk-Through Calendar Setting,” is repealed. Pursuant to Labor Code section 5307(c), the authority over walk-through calendar settings now falls under the jurisdiction of the Court Administrator. (See, also, Lab. Code, § 5500.3(a).) Currently, the Court Administrator is *not* proposing to adopt a rule regarding walk-through calendar settings. This is because, when a declaration of readiness (DOR) is filed, the initial mandatory settlement conference (MSC) date will be automatically calendared by EAMS, so as to balance the caseload among judges and to help limit how far cases are calendared out.

**Section Amended: 10450.**

Rule 10450 is amended to make minor changes, including (1) eliminating language regarding the place for filing petitions that request trial level WCAB action (because this will be covered by proposed Court Administrator Rule 10228(a)) and (2) providing that previously filed documents “shall not” be attached to petitions (instead of “should not” be attached), making it clear that this duty is mandatory, not discretionary.

**Section Amended: 10500.**

Rule 10500, currently entitled “Service,” is amended. It is re-titled “Service by the Workers’ Compensation Appeals Board.” Rule 10500 places all of the provisions relating to service by the WCAB into a single rule (i.e., current Rule 10520 would be repealed). Rule 10500 continues to provide that the WCAB may designate a party or lien claimant to serve various documents issued by the WCAB (i.e., notices of hearing, orders approving compromise and release agreements, stipulated awards, and interim or procedural orders). It also continues to provide that the WCAB itself shall serve any final order on a disputed issue after submission. However, Rule 10500 is clarified to specifically state that designated service shall not be used to serve a final order relating to a submitted disputed issue. Moreover, Rule 10500 addresses personal, mail, e-mail, and fax service by the WCAB (the latter two types of service being new under EAMS).

**Section Amended: 10505.**

Rule 10505, currently entitled “Service by the Parties,” is amended. It is re-titled “Service by the Parties or Lien Claimants.” Rule 10505 now puts all of the service provisions relating to parties and lien claimants into a single rule (i.e., current Rule 10514 would be repealed). Rule 10505 addresses personal, mail, e-mail, and fax service by the parties and lien claimants (the latter two types of service being new under EAMS), including service on another party or lien claimant using its designated preferred method of service (see Court Administrator Rule 10218) or using a previously agreed to alternative method of service. Rule 10505 also addresses the duty to reserve a document, when the serving party or lien claimant receives notice that its service on another party or lien claimant has failed.

**Section Amended: 10507.**

Rule 10507, currently entitled “Mail and Fax Service,” is amended. It is re-titled “Time Within Which To Act When A Document Is Served by Mail, Fax, or E-mail.” Rule 10507 addresses the time requirements for a party or lien claimant to act or respond when a document is served on it by mail, fax, e-mail, or any method other than personal service. Rule 10507 provides that,



for all non–personal service (either by the WCAB or by the parties or lien claimants), the time for the party or lien claimant being served to act or respond is extended by five calendar days from the date of service if its physical address is within California, by ten calendar days if its physical address is outside California but within the United States, and by twenty calendar days if its physical address is outside the United States. The term “physical address” is defined to mean the street address or Post Office Box of record of the party or lien claimant being served, even if the service is made on a non–physical address (e.g., and e–mail address or a fax number).

**Section Added: 10508.**

Rule 10508, entitled “Extension of Time for Weekends and Holidays,” is added. Rule 10508 simply codifies the principle that, if the last day to exercise a right or to perform a duty falls on a weekend or on a holiday, the act may be performed or exercised on the next business day.

**Section Amended: 10510.**

Rule 10510, currently entitled “Service on Attorney or Agent,” is amended. It is re–entitled “Service on Represented Employees or Dependents and on Attorneys or Agents.” Rule 10510, as amended, now requires that all documents *issued by the WCAB* (including decisions, orders, minutes, and notices) — whether served by the WCAB itself or by a party designated to serve under Rule 10500 — must be served on the injured employee (or the dependent of a deceased employee), even if the employee (or dependent) is represented. Otherwise, the provisions of Rule 10510 are unchanged from current Rule 10510. That is, even if the injured employee or dependent is represented, his or her attorney or hearing representative still must be served with all documents issued by the WCAB (including designated service by a party under Rule 10500). Moreover, WCAB documents are served directly on defendants or lien claimants only if they are unrepresented. Similarly, the requirement to serve an employee or dependent would *not* apply to *service by the parties and lien claimants* (other than designated service under Rule 10500). That is, Rule 10510 still provides that service by the parties and lien claimants (apart from designated service) must be made only on the attorneys or other representatives of *represented* applicants, defendants, or lien claimants. Applicants, defendants, and lien claimants would have to be served only if they are unrepresented.

**Sections Repealed: 10514 and 10520.**

Rule 10514, entitled “Proof of Service by Parties and Lien Claimants,” and Rule 10520, entitled “Proof of Service by Workers’ Compensation Appeals Board,” are repealed. Their provisions are moved to Rule 10505 and Rule 10500, respectively.

**Section Amended: 10541.**

Rule 10541, relating to “Submission at Conference,” is amended. Rule 10541 now provides that, if documentary evidence is required to determine any issue been submitted for decision at a conference, the parties shall comply with the provisions of Rule 10629 regarding the listing and filing of exhibits.

**Section Repealed: 10548.**

Rule 10548, entitled “Continuances,” is repealed. Pursuant to Labor Code section 5307(c), its provisions are transferred to Court Administrator Rule 10243.

**Section Added: 10550.**

Rule 10550, entitled “Proper Identification of the Parties and Lien Claimants,” is added. Rule 10550 provides that whenever a party or lien claimant (or an attorney or other representative for a party or lien claimant) appears in any WCAB proceeding — either (i) by filing any application, answer, settlement, lien, petition, or other pleading or (ii) by appearing at any hearing — the following requirements must be met: (1) the full legal name of the party or lien claimant must be set forth; (2) the attorney or hearing representative must identify which party or parties he or she is representing; (3) when a claims administrator appears, it must identify which party or parties (i.e., an employer, an insurance carrier, or both) it is representing and, if it is representing an insurance carrier, the claims administrator must state whether the policy includes a high self–insured retention, a large deductible, or any other provision that affects the identity of the entity or entities actually liable for the payment of compensation; (4) when insurance carrier appears, it must identify whether it is solely representing itself, or also representing an employer, and it must state whether its policy includes a high self–insured retention, a large deductible, or any other provision that affects the identity of the entity or entities actually liable for the payment of compensation; and (5) a lien claimant must state whether it is the original owner of the alleged debt or whether it purchased the alleged debt from the original owner or some subsequent purchaser.

**Section Repealed: 10555.**

Rule 10555, relating to the “Priority Conference Calendar,” is repealed. Pursuant to Labor Code sections 5307(c) and 5502(b) & (c), the provisions of current Rule 10555 are transferred to proposed Court Administrator Rule 10254.

**Section Amended: 10561.**

Rule 10561, entitled “Sanctions,” is amended. The amendments are extensive and detailed, but in essence they provide that:

- (1) sanctions may be imposed not only for violations of the WCAB’s rules of practice and procedure,

but also for violations of the rules and regulations of the AD and Court Administrator;

- (2) unless a reasonable excuse is offered or the offending party has not demonstrated a pattern of such conduct, sanctions may be imposed for executing declarations or verifications that contain false or substantially false statements of fact, that contain statements of fact that are substantially misleading, that contain substantial misrepresentations of fact, that contain statements of fact that are made without a reasonable basis or with reckless indifference as to their truth or falsity, that contain statement of fact that are literally true but are intentionally presented in a manner reasonably calculated to deceive, or that conceal or substantially conceal material facts;
- (3) unless a reasonable excuse is offered or the offending party has not demonstrated a pattern of such conduct, sanctions may be imposed for bringing a claim, conducting a defense, or asserting a position that is indisputably without merit, done solely or primarily for the purpose of harassing or maliciously injuring any person, or done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation;
- (4) unless a reasonable excuse is offered or the offending party has not demonstrated a pattern of such conduct, sanctions may be imposed for presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law — unless it can be supported by a nonfrivolous argument for an extension, modification, or reversal of the existing law or for the establishment of new law;<sup>2</sup>
- (5) unless a reasonable excuse is offered or the offending party has demonstrated a pattern of such conduct, sanctions may be imposed for asserting a position that misstates or substantially misstates the law; and
- (6) sanctions may be imposed for using any written or spoken language or gesture at or in connection with any hearing, or using any language in any

<sup>2</sup> In determining whether a claim, defense, issue, or argument is warranted under existing law, or if there is a reasonable excuse for it, Rule 10561 provides that consideration shall be given to: (A) whether there are reasonable ambiguities or conflicts in the existing statutory, regulatory, or case law, taking into consideration the extent to which a litigant has researched the issues and found some support for its theories; and (B) whether the claim, defense, issue, or argument is reasonably being asserted to preserve it for reconsideration or appellate review. This subdivision is specifically intended not to have a “chilling effect” on a party or lien claimant’s ability to pursue new theories, at least in areas of the law that reasonably can be regarded as not settled.

pleading or other document: (1) where the language or gesture is directed to the WCAB, to any of its officials or staff, or to any party or lien claimant (or the attorney or other representative for a party or lien claimant) and it is patently insulting, offensive, insolent, intemperate, foul, vulgar, obscene, abusive, or disrespectful; or (2) where the language or gesture impugns the integrity of the WCAB.

Also, Rule 10561 makes it clear that, for purposes of imposing sanctions: (1) a lien claimant may be deemed a “party” at any stage of the proceedings before the WCAB; and (2) a lay representative is an “attorney.”

#### **Section Repealed: 10563.**

Rule 10563, relating to “Appearances Required,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of current Rule 10563 are transferred to Court Administrator Rule 10240.

#### **Section Amended: 10589.**

Rule 10589, currently entitled “Consolidated Cases,” is amended. It is re-titled “Consolidation of Cases.” Rule 10589 specifically sets forth some of the factors the WCAB may consider in determining whether to consolidate two or more related cases (involving either the same injured employee or multiple injured employees). Also, it specifies certain requirements for any petition for consolidation. Finally, it specifies how pleadings, exhibits, minutes, summaries of evidence, and decisions are handled in consolidated cases. Pursuant to Labor Code section 5307(c), portions of current Rule 10589 relating to the assignment of consolidated cases are transferred to Court Administrator Rule 10260.

#### **Sections Repealed: 10590, 10591, and 10592.**

Rules 10590, 10591, and 10592 — entitled, respectively, “Consolidated Cases—Same Injured Worker,” “Consolidating Cases—Multiple Injured Workers,” and “Pleadings in Consolidated Cases” — are repealed. Pursuant to Labor Code section 5307(c), issues relating to the assignment of consolidated cases are transferred to proposed Court Administrator Rule 10260. All other issues relating to consolidated cases are addressed by Rule 10589.

#### **Section Added: 10593.**

Rule 10593, entitled “Testimony of Judicial Quasi-Judicial Officers of the Workers’ Compensation Appeals Board or of the Division of Workers’ Compensation,” is added. Rule 10593 essentially precludes Commissioners, Deputy Commissioners, PWCJs, WCJs, pro tem WCJs, special masters appointed by the WCAB, the AD (and her or his designees), the Court Administrator (and his or her designees), consultants of the Rehabilitation Unit or of the Retraining and Return to Work Unit, and arbitrators or mediators from being

subpoenaed or ordered to testify in WCAB proceedings (or in discovery relating to WCAB proceedings) regarding either (1) the reasons for or basis of any decision or ruling he or she has made or (2) his or her *opinion* of any statements, conduct, or events occurring in proceedings before him or her. The exceptions are that, following the filing of a petition to compel and upon the terms and conditions ordered by the PWCJ of the district office having venue (or by the Appeals Board, if the petition relates to a pending or impending petition for reconsideration, removal, or disqualification), the judicial or quasi-judicial officer may be subpoenaed or ordered to testify: (1) as a percipient witness to events that occurred in the proceedings before him or her, to the same extent as any other percipient witness; (2) on an issue of disqualification under Labor Code section 5311 and Code of Civil Procedure section 641; or (3) where his or her testimony is necessary on an issue of an alleged ex parte communication. Various requirements for a petition to compel are set out, including specificity, verification, and service. Also, procedures for the determination of a petition to compel are established.

#### **Section Added: 10603.**

Rule 10603, entitled “Oversized Exhibits, Diagnostic Imaging, Physical Exhibits, and Exhibits on Media,” is added. Rule 10603 (which is being adopted largely because of EAMS) provides that certain exhibits — i.e., oversized documents, diagnostic imaging, permanent business/office records, physical objects, electronic media (e.g., CDs and DVDs) and photographs — are to be filed only at the time of trial. Rule 10603 further provides that, unless otherwise ordered by the WCAB, these exhibits would have to be retained by the offering party until the later of either: (1) five years after the filing of the initial application or (2) six months after all appeals have been exhausted (or the time for seeking appellate review has expired) with respect to the issues on which the exhibit was offered. Although Rule 10603 provides that these exhibits should be filed only at the time of trial, it further provides for access (or, if practicable, for copying) by any opposing party before or after trial.

#### **Section Amended: 10608.**

Rule 10608, currently entitled “Filing and Service of Physicians’ Reports,” is amended. It is re-titled “Filing and Service of Medical Reports and Medical–Legal Reports.” The essential elements of Rule 10608 are substantially similar to the essential elements of current Rule 10608. However, new Rule 10608 makes it clear that, after the filing of an application, a request may be made to *a lien claimant* (i.e., not just to a party) to serve copies of medical and medical–legal reports in its possession or control. Also, new Rule 10608 makes it clear that, when any declaration of readiness (DOR) is filed,

all previously unserved medical and medical–legal reports in the declarant’s possession or control shall be served on all other parties (whether or not they had previously requested service) and on all lien claimants who have requested service. Further, new Rule 10608 makes it clear that, within six days after the filing of any DOR (and whether or not any objection to the DOR has been filed), all other parties and lien claimants shall serve all previously unserved medical and medical–legal reports on all other parties (whether or not they had previously requested service) and on all lien claimants who have requested service. Also, new Rule 10608 provides that, at any time after the post–DOR service described in the two preceding sentences, a lien claimant may initiate a request for service. In each of these situations, there is a continuing duty to serve subsequently received medical and medical–legal reports within six days of receipt. Finally, new Rule 10608 provides that all medical and medical–legal reports that have not been previously served shall be served on all other parties and lien claimants upon the filing of a compromise and release or stipulations with request for award, unless the rights and/or liabilities of those parties or lien claimants were previously fully resolved.

#### **Section Added: 10610.**

Rule 10610, entitled “Admissibility and Service of Reports from Non–Medical Experts,” is added. Rule 10610 provides that, absent an alternative basis for its exclusion, the written report of a non–medical expert may be admitted in evidence, in lieu of or in addition to the expert’s sworn testimony at hearing, if: (1) the body of the report contains various statements, made under penalty of perjury, that, in essence, declare that the contents of the report are true and correct to the best knowledge of the non–medical expert, declare that (with certain limited exceptions) no one other than the non–medical expert participated in the non–clerical preparation of the report, and set forth the qualifications of the non–medical expert; and (2) the report is the sort of evidence on which responsible persons are accustomed to rely in the conduct of their serious affairs. Further, Rule 10610 provides that reports of non–medical experts shall be served in the same time and manner as required for the service of medical and medical–legal reports. Absent a showing of good cause, the failure to timely serve the report may result in its exclusion from evidence. Also, Rule 10610 provides that, regardless of whether a non–medical expert’s report is or is not admitted in evidence, this section shall have no bearing on whether any of the costs associated with the report and/or its preparation are allowable under Labor Code section 5811 or under any other provision of law.



**Section Amended: 10616.**

Rule 10616, entitled “Employer–Maintained Records,” is amended. The amendment provides that employer–maintained medical records shall be “served” in accordance with WCAB Rules 10608 and 10615, rather than “filed and served” in accordance with those rules. This change is made because, pursuant to Labor Code section 5307(c), the provisions relating to the “filing” of such records are transferred to various rules of the Court Administrator.

**Section Amended: 10626.**

Rule 10626, entitled “Hospital and Physicians’ Records,” is amended. Rule 10626 provides that, subject to Labor Code section 3762 *and except as otherwise provided by law*, parties, attorneys, agents, and physicians may examine and copy relevant medical records. Also, Rule 10626 deletes the aspect of current Rule 10626 providing that a party proposing to offer such medical records in evidence shall designate the relevant portion or portions, preferably in writing before the hearing. This provision is deleted because Rule 10629 now addresses the designation of relevant portions of excerpted physician, hospital, and dispensary records.

**Section Added: 10629.**

Rule 10629, entitled “Filing and Listing of Exhibits,” is added. It requires that, at every hearing at which any issue will be submitted for decision, the parties and lien claimants shall submit to the WCAB, and shall personally serve on each other, a list of the exhibits that the party or lien claimant proposes to offer in evidence. Rule 10629 also provides that, if any such hearing is continued, a new exhibit list shall be prepared and served, although certain exceptions are made. Further, Rule 10629 sets forth various requirements regarding the listing of exhibits. Finally, Rule 10629 provides that injured employees, dependents or uninsured employers who are unrepresented may be referred to the Information and Assistance Office to help prepare the exhibit list.

**Section Repealed: 10630.**

Rule 10630, entitled “Return of Exhibits,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of current Rule 10630 (along with provisions of Rules 10755 and 10758) are incorporated into Court Administrator Rule 10273.

**Section Amended: 10750.**

Rule 10750, entitled “Record of Proceedings,” is amended. In part, Rule 10750 clarifies that, although adjudication files are to be electronically stored and maintained in EAMS by DWC, the adjudication files are nonetheless files of the WCAB. Rule 10750 also clarifies, in light of EAMS, that all of the documents listed in the rule (which now also include “the arbitra-

tor’s file, if any”) are part of the record of proceedings, whether maintained in paper or electronic form. Rule 10750 further provides that, upon approval of a compromise and release or stipulations with request for award, all medical reports filed as of the date of approval shall be deemed to have been admitted in evidence and shall be deemed to have been transferred to the record of proceedings. (A similar provision is in current Rule 10751, but this provision is more appropriately placed in the rule on “Record of Proceedings.”)

**Section Amended: 10751.**

Rule 10751, currently entitled “Legal File,” is amended. It is re–entitled “Adjudication File.” Rule 10751 clarifies that the WCAB’s adjudication file includes all findings, orders, decisions, awards and correspondence issued by the WCAB, *except* for documents that, under the Court Administrator’s rules, are not available for inspection by *any* person. Rule 10751 also would clarify that the WCAB’s adjudication file includes all documents filed by any party or lien claimant, *except* for documents that, under the Court Administrator’s rules, are not supposed to be filed, unless otherwise ordered by the WCAB. Finally, Rule 10751 deletes the provision that all medical reports are deemed transferred to the legal file after a compromise and release agreement or a stipulations with request for award has been approved. A similar provision is now contained in Rule 10750.

**Section Amended: 10753.**

Rule 10753, entitled “Inspection of Files,” is amended. It states that, except as provided by sections 10754, 10271, and 10272, or as ordered by a WCJ or the Appeals Board, the adjudication case files of the WCAB may be inspected in accordance with the provisions of section 10270. These changes have been made because, pursuant to Labor Code section 5307(c), the Court Administrator has adopted new Rule 10270, relating to “Access to and Viewing Electronic Case Files,” new Rule 10271, relating to “Inspection of Paper Case Files,” and new Rule 10272, relating to “Sealing Documents.”

**Section Amended: 10754.**

Rule 10754, entitled “Sealed Documents,” is amended. Rule 10754 strikes all of the provisions of current Rule 10754 and provides instead that medical reports and other records shall be sealed only in accordance with the provisions of Court Administrator Rule 10272. Proposed Rule 10272 is also entitled “Sealed Documents,” but it makes significant changes to the substance of current Rule 10754.

**Section Amended: 10755.**

Rule 10755, entitled “Destruction of Records,” amended. Rule 10755 strikes all of the provisions of current Rule 10755 and instead provides that the

WCAB's records may be destroyed in accordance with Court Administrator Rule 10273, which is entitled "Retention, Return and Destruction of Records and Exhibits." Court Administrator Rule 10273 combines elements of current Rules 10755, 10758, and 10762. (Rules 10758 and 10762 — entitled, respectively, "Destruction of Case Files" and "Reporter's Notes" — are repealed.)

**Sections Repealed: 10758 and 10762.**

Rules 10758 and 10762 — entitled, respectively, "Destruction of Case Files" and "Reporter's Notes" — are repealed. Rule 10755, entitled "Destruction of Records," is amended to provide that the WCAB's records may be destroyed in accordance with Court Administrator Rule 10273. Because Court Administrator Rule 10273 combines elements of current Rules 10758 and 10762, these rules are no longer necessary.

**Section Amended: 10770.**

Rule 10770, entitled "Lien Procedure," is amended. Rule 10770 requires most lien claimants to submit their liens using optical character recognition (OCR) forms. Rule 10770 also requires that all liens, together with their supporting documentation (i.e., a full statement or itemized voucher justifying the right to reimbursement) must be concurrently served on all parties at the time of filing, with certain specified exceptions. Further, Rule 10770 provides that the WCAB will not accept a lien for filing that does not list an adjudication case number, unless the lien claimant is also filing an initial (case opening) application in accordance with Rule 10770.5. Additionally, Rule 10770 makes provisions for "amended" liens, which are defined. Rule 10770 next requires lien claimants to notify the WCAB and the parties within five business days after a lien has been resolved or withdrawn. Finally, capital 10770 provides that a lien claimant shall be notified of all hearings, whether or not the hearing directly involves the lien.

**Section Added: 10770.5.**

Rule 10770.5, entitled "Verification to Filing of Lien Claim or Application by Lien Claimant," is added. It requires that lien claims and applications for adjudication by lien claimants seeking reimbursement for medical or medical-legal expenses would have to include a verification under penalty of perjury specifying that one of the time limit set forth in Labor Code section 49 of 3.6 has been met. Further, Rule 10770.5 requires that, if the lien claimant is filing an application, its verification under penalty of perjury also shall contain: (1) a statement specifying in detail the facts establishing that venue in the district office being designated is proper pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2); and (2) a statement specifying in detail the facts establishing that the filing lien claimant has made a diligent search and has determined that no adju-

dication case number exists for the same injured worker and same date of injury at any district office. A "diligent search" is defined. Finally, Rule 10770.5 establishes the format for the verification under penalty of perjury and it provides that a failure to attach the verification — or an incorrect verification — may be a basis for sanctions.

**Section Added: 10770.6.**

Rule 10770.6, entitled "Verification to Filing of Declaration of Readiness By or On Behalf of Lien Claimant," is added. Consistent with Labor Code section 4903.6(b), Rule 10770.6 requires that no declaration of readiness to proceed shall be filed with respect to a lien claim that seeks reimbursement for medical or medical-legal expenses, unless accompanied by a verification under penalty of perjury certifying either (1) that the underlying case has been resolved or (2) that at least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with his or her case. Rule 10770.6 requires the declarant to make a "diligent search" to determine that the injured worker has chosen not to proceed with his or her case and requires that the verification specify the efforts made in conducting the diligent search. A "diligent search" is defined. Finally, Rule 10770.6 establishes the format for the verification under penalty of perjury and it provides that a failure to attach the verification — or an incorrect verification — may be a basis for sanctions.

**Section Repealed: 10771.**

Rule 10771, relating to "Medical-Legal Expenses," is repealed. It is unnecessary in light of the adoption of Rule 10770.5, which more extensively covers the same subject.

**Section Amended: 10779.**

Rule 10779, entitled "Disbarred and Suspended Attorneys," is amended. Rule 10779 now provides that attorneys who have been disbarred or suspended for reasons other than nonpayment of State Bar fees, who have been placed on involuntary inactive status by the State Bar, or who have resigned while disciplinary action is pending cannot petition the Appeals Board for permission to appear in WCAB proceedings.

**Section Added: 10782.**

Rule 10782, entitled "Vexatious Litigants," is added. Rule 10782 defines "vexatious litigant," which includes a party or lien claimant who, while acting in propria persona in proceedings before the WCAB, repeatedly relitigates — or attempts to relitigate — an issue of law or fact that has been finally determined against that party or lien claimant by the WCAB or by an appellate court. Rule 10782 sets forth the procedure for how a self-represented party or lien claimant may be declared a "vexatious litigant" and it establishes the legal effect of being declared a "vexatious litigant." However, Rule 10782 recognizes that, unlike civil courts, the nature of

workers' compensation is that there can be multiple proceedings relating to the same case. For example, even an issue that has been finally determined (in the sense that all appeals have been exhausted or the time for seeking appellate review has expired) can be reopened by a timely petition to reopen. (See Lab. Code, §§ 5410, 5803, 5804.) Such a petition to reopen can be based on a change in the employee's condition, newly discovered evidence, a change in the law, or other factors. Moreover, many cases are tried or decided piecemeal (with certain issues not being raised by the parties or being deferred by the WCAB) or there may be supplemental proceedings on issues such as the enforcement of a medical treatment award or a claim of penalties. Therefore, the focus of Rule 10782 is on the self-represented party or lien claimant who repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined against that party or lien claimant by the WCAB or an appellate court and either the time for reopening under Labor Code sections 5410 or 5803 and 5804 has passed or, although the time for reopening under those sections has not passed, there is no good faith and non-frivolous basis for reopening.

**Section Added: 10785.**

Rule 10785, entitled "Electronically Filed Decisions, Findings, Awards, and Orders," is added. This rule provides that the Appeals Board or a WCJ may electronically file any decision, findings, award, order or other document within EAMS and that any such electronically filed document shall have the same legal effect as a document filed in paper form.

**Section Amended: 10840.**

Rule 10840, entitled "Filing Petitions for Reconsideration and Answers," is amended. It is re-entitled "Filing Petitions for Reconsideration, Removal, Disqualification and Answers." Rule 10840 provides that petitions for reconsideration, removal, and disqualification (and answers) may be filed with any district office or with the office of the Appeals Board in San Francisco (however, where a petition is filed in a district office, duplicate copies of the petition are not to be filed in any other district office or with the Appeals Board). Rule 10840 also provides that individuals or entities who, as part of the Division of Workers' Compensation's electronic filing trial group, have been issued individual or organizational logins, may file petitions for reconsideration, removal, and disqualification (and answers) electronically within EAMS.

**Section Amended: 10842.**

Rule 10842, entitled "Contents of Petition for Reconsideration and Answer," is amended. It is re-entitled "Contents of Petitions for Reconsideration, Removal, and Disqualification and Answers." Rule 10842 provides that petitions for reconsideration, removal and

disqualification (and answers thereto) shall fairly state all of the material evidence and shall separately state and clearly set forth each contention. Rule 10842 also provides that a failure to state all of the material evidence may be a basis for denying a petition for reconsideration, removal, and disqualification. Rule 10842 additionally requires that evidentiary statements shall be supported by references that state with specificity the place in the record where the evidentiary statement appears. These requirements are set out in Rule 10842. Rule 10842 finally provides that documents that are already in evidence or are otherwise already part of the adjudication file may not be attached to petitions for reconsideration, removal, and disqualification (and answers thereto).

**Section Amended: 10843.**

Rule 10843, currently entitled "Petitions to Remove," is amended. It is re-entitled "Petitions for Removal and Answers" and it imposes a new requirement that petitions for removal and answers thereto must be verified under penalty of perjury.

**Section Added: 10844.**

Rule 10844, entitled "Petitions for Disqualification and Answers," is added. It requires that any petition for disqualification (and any answer thereto) must be verified under penalty of perjury.

**Section Added: 10845.**

Rule 10845, entitled "General Requirements for Petitions for Reconsideration, Removal, and Disqualification, and for Answers and Other Documents," is added. Rule 10845 requires that, except as otherwise provided by sections 10840 or 10865, all documents filed in connection with any petition for reconsideration, petition for removal, petition for disqualification or any other matter pending before the Appeals Board shall comply with the requirements of Court Administrator Rules 10228, 10229, 10230, 10232, 10235, and 10236. These provisions are necessary in light of EAMS. Rule 10845 requires compliance with the general 25-page limitation of Court Administrator Rule 10232(a)(6), however, any supplemental petition or answer submitted under Rule 10848 shall not exceed ten pages. Rule 10845 allows the Appeals Board to make exceptions on its own motion or on a clear and convincing showing of good cause. Finally, Rule 10845 provides that a document sent directly to the Appeals Board by fax or e-mail will not be accepted for filing, unless otherwise ordered by the Appeals Board.

**Section Amended: 10846.**

Rule 10846, entitled "Skeletal Petitions," is amended to provide that petitions for removal and disqualification, in addition to petitions for reconsideration, may be denied if unsupported by specific references to the record and to the principles of law involved. Rule 10846



also allows all three types of petitions (reconsideration, removal, and disqualification) to be “dismissed.”

**Section Amended: 10848.**

Rule 10848, entitled “Supplemental Petitions,” is amended to provide that for petitions for removal and disqualification (as well as petitions for reconsideration): (1) supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board; and (2) supplemental petitions or pleadings or responses other than the answer, except as provided by this rule, shall neither be accepted nor deemed filed for any purpose and shall not be acknowledged or returned to the filing party.

**Section Amended: 10850.**

Rule 10850, entitled “Proof of Service,” is amended to specifically require that service of petitions for reconsideration, removal, and disqualification be made “in accordance with Rule 10505.” Rule 10505 applies to service by parties and lien claimants, and it sets out proof of service standards for personal service, service by mail, service by e-mail, and service by fax.

**Section Amended: 10860.**

Rule 10860, entitled “Report of Workers’ Compensation Judge,” is amended to provide that, instead of having a WCJ “send” a Report on a petition for reconsideration, removal, or disqualification to the Appeals Board, the WCJ would instead “submit” the Report to the Appeals Board. This language change gives recognition to the fact that the Reports of the WCJs will be electronically filed within EAMS, and will no longer be mailed or physically delivered to the Appeals Board.

**Section Amended: 10865.**

Rule 10865, currently entitled “Reconsideration—Labor Code Sections 3201.5 and 3201.7,” is amended. It is re-entitled “Reconsideration of Arbitration Decisions Made Pursuant To Labor Code Sections 3201.5 and 3201.7.” Rule 10865 sets forth various requirements relating to petitions for reconsideration from an arbitration decisions in “carve-out” cases. A “carve-out” petitions for reconsideration (together with a document cover sheet) is to be filed directly with the office of the Appeals Board in San Francisco, and not with any district office, including the San Francisco district office. If a carve-out petition for reconsideration is submitted to a district office in violation of this rule, the petition shall be returned to the petitioner with a letter explaining the defect and indicating that the petition should be filed directly with the Appeals Board in San Francisco. Rule 10865 also provides that a petition for reconsideration in carve-out cases shall include a completed application for adjudication of claim (but without the venue designation), which shall be appended to

the petition under a document separator sheet. After the filing of the carve-out petition for reconsideration and the document cover sheet, a WCAB adjudication file will be created and an adjudication case number will be assigned, if there is no existing adjudication case number. The arbitrator is required to submit a photocopy of the complete arbitration record to the Appeals Board within 15 days after receipt of the petition for reconsideration, and the arbitrator is required to prepare a Report on the petition consistent with Rule 10860.

**Section Amended: 10866.**

Rule 10866, currently entitled “Reconsideration of Arbitrator’s Decisions or Awards,” is amended. It is re-entitled “Reconsideration of Arbitrator’s Decisions or Awards Made Pursuant To the Mandatory or Voluntary Arbitration Provisions of Labor Code Sections 5270 through 5275.” Rule 10866 provides that a petition for reconsideration from an arbitration decision made pursuant to sections 5270 through 5275 may be filed with any district office or with the office of the Appeals Board in San Francisco. However, Rule 10866 requires the arbitrator to submit a photocopy of his or her file, and of his or her report and recommendation on the petition, to the district office having venue. The costs of photocopying are to be reimbursed to the arbitrator in accordance with the provisions of Labor Code section 5273.

**Section Repealed: 10867.**

Rule 10867, relating to “Report of Arbitrator,” is repealed because its provisions are merged into Rule 10866.

**Section Repealed: 10890.**

Rule 10890, relating to “Walk-Through Documents,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of Rule 10890 are transferred to Court Administrator Rule 10280.

**Section Amended: 10946.**

Rule 10946, currently entitled “Medical Reports,” is amended. It is re-entitled “Medical Reports in Subsequent Injuries Benefits Trust Fund Cases.” Rule 10946 requires that medical reports shall be served on the Subsequent Injuries Benefits Trust Fund (SIF) no later than thirty (30) days prior to the mandatory settlement conference (MSC) or other hearing, unless service is waived by SIF.

**Section Amended: 10950.**

Rule 10950, currently entitled “Appeal from Order Granting or Denying Petition for Order Requiring Employee to Select Employer-Designated Physician,” is amended. It is re-entitled “Petitions Appealing Orders Issued by the Administrative Director.” Rule 10950 provides that, except for petitions appealing audit penalty assessments issued by the Administrative Director pursuant to Labor Code section 129.5(g), all petitions

appealing orders issued by the AD are to be filed in accordance with the provisions of Article 9 (section 10290 et seq.) of the rules of the Court Administrator. Then, when a WCJ has determined such an appeal, any aggrieved party may file a petition for reconsideration with the Appeals Board in accordance with the provisions of Labor Code section 5900 et seq. and WCAB Rules 10840 et seq.

**Section Repealed: 10952.**

Rule 10952, entitled “Appeal of Notice of Compensation Due,” is repealed. Pursuant to Labor Code section 5307(e), the provisions of Rule 10952 are transferred to Court Administrator Rule 10291.

**Section Amended: 10953.**

Rule 10953, entitled “Petition Appealing Audit Penalty Assessment — Labor Code Section 129.5(g),” is amended. Under Rule 10953, petitions appealing audit penalty assessments by the Administrative Director (AD) under Labor Code section 129.5 would *not* be filed with a district office of the WCAB and be initially determined by a WCJ, subject to a petition for reconsideration to the Appeals Board. Instead, petitions appealing section 129.5 audit penalty assessments would be filed directly with (and determined by) the Appeals Board. Some additional changes to Rule 10953 are made in light of the EAMS. A petition appealing a Labor Code section 129.5(g) penalty assessment must be accompanied by a completed document cover sheet. Moreover, after the filing of the petition, an EAMS adjudication case will be created and an EAMS adjudication case number will be assigned, which will be served by the WCAB on the AD and on the parties and attorneys listed on the proof of service to the petition. Furthermore, a certified photocopy of the AD’s record of proceedings is submitted, which the WCAB scans into EAMS and discards.

**Section Repealed: 10955.**

Rule 10955, entitled “Rehabilitation Appeals,” is repealed. Pursuant to Labor Code section 5307(c), the provisions of Rule 10955 are transferred to Court Administrator Rule 10293.

**Section Repealed: 10957.**

Rule 10957, entitled “Deposition of Rehabilitation Consultants,” is repealed. The depositions (as well as the trial testimony) of Rehabilitation Consultants (as well as other judicial and quasi-judicial officers in workers’ compensation matters) is now addressed by Rule 10593.

**Sections Repealed: 10995 and 10996.**

Rules 10995 and 10996 — entitled, respectively, “Mandatory Arbitration” and “Voluntary Arbitration” — are repealed. Pursuant to Labor Code section 5307(c), the provisions of Rules 10995 and 10996 are

transferred to Court Administrator Rules 10295 and 10296.

**STATE REIMBURSABLE MANDATE**

The WCAB has determined that its proposed regulatory action (i.e., its adoption, amendment, or repeal of various of its rules of practice and procedure) will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers’ compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46; cf. *City of Sacramento v. State of California* (1990) 50 Cal.3d 51; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.) The requirements imposed on all employers by the proposed changes to these regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers, private and public, and not uniquely to local governments.

**COST OR SAVINGS TO LOCAL AGENCIES  
OR SCHOOL DISTRICTS**

The WCAB’s proposed regulatory action (i.e., its adoption, amendment, or repeal of various of its rules of practice and procedure) may, from time to time, impose minor costs on local agencies and school districts. Any such costs, however, will be non-discretionary because the requirement that every employer contribute to the funding of California’s workers’ compensation programs is a statutory obligation. Furthermore, any such costs are non-reimbursable because, as discussed above, the requirement on employers to contribute to the funding of California’s workers’ compensation programs is not unique to local agencies or school districts and applies to all employers alike, public and private, including the State of California. (See Lab. Code, §§ 62.5(a)(1) & (e)(1) (workers’ compensation system is funded by surcharges assessed “upon all employers, as defined in [Labor Code] Section 3300”), 3300 (defining “employer” to include “[t]he State and every State agency,” “[e]ach county, city, district, and all public and quasi public corporations and public agencies therein,” and “[e]very person including any public service corporation, which has any natural person in service”), 3700 (providing that “[e]very employer . . . shall secure the payment of [workers’] compensation” either by being insured or by obtaining a certificate of consent to self-insure, including “any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state”).)

## COST OR SAVINGS TO STATE AGENCIES

The WCAB's proposed regulatory action (i.e., its adoption, amendment, or repeal of various of its rules of practice and procedure) may, in certain situations, impose minor costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs are non-reimbursable, however, since, as discussed above, the requirement that employers contribute to the funding of California's workers' compensation programs is not unique to State agencies and applies to all employers alike, both public and private. (See Lab. Code, §§ 62.5(a)(1) & (e)(1) (workers' compensation system is funded by surcharges assessed "upon all employers, as defined in [Labor Code] Section 3300"), 3300 (defining "employer" to include "[t]he State and every State agency," "[e]ach county, city, district, and all public and quasi public corporations and public agencies therein," and "[e]very person including any public service corporation, which has any natural person in service").<sup>3</sup>

## COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

The proposed regulations will not affect any federal funding.

## DETERMINATION REGARDING SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The WCAB declares that it has initially determined that its proposed regulatory action (i.e., its adoption, amendment, or repeal of various of its rules of practice and procedure) will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulatory action involves changes in the procedures for the adjudication of workers' compensation cases that do not impose significant financial or economic burdens on the regulated public; there is no change in the amount of compensation that is paid to injured workers.

## COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

Preliminarily, the WCAB emphasizes that it has examined the cost impacts only of its own proposed regu-

latory action. That is, the WCAB will not examine the cost impact of the Electronic Adjudication Management System (EAMS), except to the extent that EAMS has lead the WCAB to adopt regulations that, in and of themselves, have a cost impact. The WCAB has concluded that none of its EAMS-related regulations have any cost impacts.<sup>4</sup>

Also, the WCAB will not examine the cost impact of the Legislature's transfer of some regulatory authority over the workers' compensation adjudication system to the Court Administrator of DWC. (See Lab. Code, § 5307(a).) Therefore, the WCAB will not address the cost impact of the regulations being proposed by the Court Administrator, including: (1) those that cover subjects formally covered by the WCAB's rules; or (2) those that implement EAMS and establish procedures for EAMS. Similarly, the WCAB will not address the cost impact of regulations it has repealed in light of the Legislature's transfer of some regulatory authority to the Court Administrator, even if the Court Administrator has decided not to adopt the same or similar rules.

The WCAB has concluded that none of its proposed new or amended rules have any cost impacts.

Proposed Rule 10561 does expand the types of "bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay" that are expressly subject to sanctions under Labor Code section 5813. However, current Rule 10561 already provides that "[v]iolations subject to the provisions of Labor Code Section 5813 shall include but are not limited to the following . . ." (Emphasis added.) Therefore, nothing in current Rule 10561 precludes the imposition of sanctions for "bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay" that are not listed therein (and that are now listed in proposed Rule 10561). Moreover, the parties and representatives to a workers' compensation case pending before the WCAB may avoid the costs associated with proposed Rule 10561 by simply not engaging in "bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay."

Proposed Rule 10603 does limit when oversized exhibits, diagnostic imaging, physical exhibits, and exhibits on media may be filed and does require the party introducing such exhibits to retain them after trial until the later of either: (1) five years after the filing of the initial application for adjudication (or other case opening document) or (2) at least six months after all appeals have been exhausted or the time for seeking appellate

<sup>3</sup> Although Labor Code section 3700 provides that "[e]very employer except the state" shall secure the payment of workers' compensation" either by being insured or by obtaining a certificate of consent to self-insure, this means merely that the State may be legally uninsured. It does not immunize the State from payment of workers' compensation benefits.

<sup>4</sup> As discussed above, EAMS is a computerized system that the Division of Workers' Compensation (DWC) has created pursuant to a legislative appropriation. (Stats. 2004, ch. 208, Item 7350-001-0223(4), p. 592 (S.B. 1113 [appropriations bill].) The WCAB will leave it to the Court Administrator of DWC to assess the cost impacts of EAMS.



review has expired with respect to the decision on the issue(s) for which the exhibit was offered in evidence. However, in large part, this is merely a codification of existing practice. In essence, the WCAB has never stored exhibits that do not readily fit within its paper case files. Instead, such exhibits have routinely been returned to the party introducing them, with either a formal order or an implicit expectation (by custom and practice) that the party will retain the exhibit within its possession or control. Occasionally, under its current rules, the WCAB will keep photographs, videotapes, CDs, and DVDs in its paper files. However, these are duplicates (not “originals” per se), and the parties will normally keep copies of these photographs, videotapes, CDs, and DVDs in their possession or control in any event. Accordingly, proposed Rule 10603 does not cause any identifiable costs.

Proposed Rule 10610 allows for the admission in evidence of the written report of a non-medical expert, in lieu of or in addition to the expert’s sworn testimony at hearing. As discussed in the Initial Statement of Reasons, however, written report of a non-medical experts are commonly admitted in evidence. Therefore, a rule expressly allowing the admission of a report that would have been admitted even in the absence of the rule will not have any cost impact. Moreover, to the extent that written report of a non-medical experts have been excluded from evidence, a rule expressly allowing their admission still will not have any adverse cost impact. To the contrary, there are normally extra costs associated with the live testimony of an expert witness, especially when trials need to be continued or are delayed because of the WCAB’s strained calendar (which may mean that, at the cost of the parties, the expert has to appear at the WCAB on multiple occasions). Further, the costs associated with an expert’s preparation for trial often substantially overlap the costs associated with an expert’s preparation of a written report because, in either case, the expert must do the same interviews, review the same documents, and conduct the same tests in order to render his or her opinion. Yet, even absent proposed Rule 10610, an expert is not entitled to a “double recovery” to the extent his or her work in preparing a report overlaps or duplicates his or her work in preparing to testify. (See *Costa v. Hardy Diagnostic* (2006) 71 Cal.Comp.Cases 1797, 1819 (Appeals Board en banc).) Moreover, even absent Rule 10610, the WCAB has the discretion to award costs for the preparation of non-medical expert’s report, even if the report itself is not admissible. (*Barr v. Workers’ Comp. Appeals Bd.* (2008) \_\_\_ Cal.App.4th \_\_\_ [2008 Cal. App. LEXIS 942, 78 Cal.Rptr.3d 732].) Accordingly, proposed Rule 10610 does not cause any identifiable costs.

Proposed Rule 10770, among other things, changes the circumstances under which lien claims must be served. However, proposed Rule 10770 requires a less-er degree of service (and, therefore lesser overall costs) than current Rule 10770, because it allows a lien claimant not to serve the injured employee (even if he or she is unrepresented) if the employee’s underlying claim is deemed to have been resolved. (Proposed Rule 10770 then goes on to define when an employee’s underlying claim is deemed to have been resolved.)

Proposed Rules 10770.5 and 10770.6 set out certain verification requirements for the filing of lien claims, applications for adjudication, and declarations of readiness to proceed by lien claimants seeking reimbursement for medical or medical-legal expenses under section 4903(b). However, these proposed rules merely implement the statutory requirements of Labor Code section 4903.6 and, therefore, any costs arise out of the Legislature’s enactment, not the proposed rules.

The WCAB concludes that all of its other new or amended rules either do not significantly alter costs as they exist under current rules, or reduce costs as they exist under current rules.

#### ECONOMIC IMPACT ON SMALL BUSINESSES

The WCAB estimates that approximately half of the businesses affected are small businesses, either third-party administrators or law firms that handle workers’ compensation cases. The impact on these businesses is discussed under *Cost Impacts on Representative Private Persons or Businesses*, above.

#### ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The WCAB has determined that the changes proposed to the regulations will have no effect on the creation or elimination of jobs or existing businesses within California, or affect the expansion of current California businesses.

#### IMPACT ON HOUSING COSTS

The WCAB has determined that the changes proposed to the regulations will have no effect on housing costs.

#### CONSIDERATION OF ALTERNATIVES

The WCAB has identified no reasonable alternatives to its proposed regulatory action, and no such reason-

able alternatives have been brought to the attention of the WCAB, that: (1) would be more effective in carrying out the purposes for which these regulations are proposed; or (2) would be as effective and less burdensome to affected persons than the proposed action.

#### PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Consistent with Government Code section 11346.45, a tentative draft of the text of the WCAB's proposed regulations was made available for informal pre-regulatory public comment through the WCAB's web forum at <http://www.dir.ca.gov/wcab/wcabforums.htm>. As reflected in the Initial Statement of Reasons, the WCAB has considered and responded to the informal pre-regulatory public comments.

#### PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. In addition, any person may submit written comments on the proposed regulations, prior to the public hearing. The address for submission of comments by mail is:

Neil P. Sullivan  
Assistant Secretary and Deputy Commissioner  
Workers' Compensation Appeals Board  
Post Office Box 429459  
San Francisco, CA 94142-9459

The address for submission of comments by delivery service or personal delivery is:

Neil P. Sullivan  
Assistant Secretary and Deputy Commissioner  
Workers' Compensation Appeals Board  
455 Golden Gate Avenue, Ninth Floor  
San Francisco, CA 94102

The address for submission of comments by electronic mail (e-mail) is [WCABRules@dir.ca.gov](mailto:WCABRules@dir.ca.gov).

Unless submitted at the public hearing, all written comments must be *received* by the agency contact person, no later than 5:00 p.m. on September 12, 2008. The WCAB prefers written comments to oral testimony. If you have provided a written comment, it will not be necessary to present oral testimony at the public hearing.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND INTERNET ACCESS

In addition to the Informative Digest included in this Notice, an Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice, below. In addition, upon request, the entire rulemaking file will be made available for inspection and copying at the address and at the times indicated below. As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, and the pre-rulemaking comments.

In addition, the above-cited materials may be accessed on the internet at  
[www.dir.ca.gov/wcab/WCABPropRegs2008.htm](http://www.dir.ca.gov/wcab/WCABPropRegs2008.htm).

#### CONTACT PERSON

Any interested person may inspect a copy, or direct questions regarding, the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the Rulemaking File. The Rulemaking File may be inspected by any interested person, and will be available for inspection at the Workers' Compensation Appeals Board, 455 Golden Gate Avenue, Ninth Floor, San Francisco, CA 94102, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing from the contact person:

Annette Gabrielli  
Regulations Coordinator  
Workers' Compensation Appeals Board  
Post Office Box 429459  
San Francisco, CA 94142-9459  
E-mail: [WCABRules@dir.ca.gov](mailto:WCABRules@dir.ca.gov)

The telephone number of the contact person is (415) 703-4580.

#### BACKUP CONTACT PERSON/CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Neil P. Sullivan  
Assistant Secretary and Deputy Commissioner  
Workers' Compensation Appeals Board  
Post Office Box 429459  
San Francisco, CA 94142-9459  
E-mail: [WCABRules@dir.ca.gov](mailto:WCABRules@dir.ca.gov)

The telephone number of the backup contact person/  
contact person for substantive questions is (415)  
703-4554.

**Note:** In the event the backup contact person/contact  
person for substantive questions is unavailable, inqui-  
ries should be directed to the following alternative  
backup contact person/contact person for substantive  
questions at the same address, email address and tele-  
phone number noted above: Rick Dietrich, Assistant  
Secretary and Deputy Commissioner.

#### AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

Consistent with Government Code section  
11346.8(c) and Cal. Code Regs., tit. 1, § 44, if the  
WCAB makes changes to the proposed regulations as a  
result of the public hearing and public comment re-  
ceived, the modified text with changes clearly indicated  
will be available for public comment for at least 15 days  
prior to the date on which the regulations are adopted.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final State-  
ment of Reasons consistent with Government Code  
Section 11346.9(a) may be obtained from the contact  
person indicated above.

In addition, the Final Statement of Reasons will be  
posted on the internet and may be accessed at  
[www.dir.ca.gov/wcab/WCABFinalRegs2008.htm](http://www.dir.ca.gov/wcab/WCABFinalRegs2008.htm).

#### AUTOMATIC MAILING

A copy of this Notice, including the Informative Di-  
gest, the Initial Statement of Reasons, and the text of the  
proposed regulations, will automatically be sent to  
those interested persons on the mailing list of the  
WCAB, and to all persons who have requested notice of  
hearing as required by Labor Code Section 5307.4.

If adopted, the regulations as proposed will appear se-  
quentially in the California Code of Regulations at Title  
8, Chapter 4.5, Subchapter 2, commencing with Section  
10300.

## TITLE 10. DEPARTMENT OF INSURANCE

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, California 94105

REG-2008-00010

July 14, 2008

### NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING LOW COST AUTOMOBILE INSURANCE RATES

#### SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner  
will hold a public hearing to consider an adjustment to  
rates for the California Low Cost Automobile Insurance  
Program.

Insurance Code Section 11629.72(c) provides that,  
annually, the California Automobile Assigned Risk  
Plan ("CAARP") shall submit to the Commissioner a  
proposed Low Cost Automobile rate and surcharge  
schedule for approval. Accordingly, CAARP submitted  
its 2008 rate recommendation on January 15, 2008, pro-  
posing to increase rates by an average of 8.8%.

Currently, the annual premiums for the liability  
policy, by county, are \$318 for Alameda, \$311 for Al-  
pine, \$280 for Amador, \$253 for Butte, \$275 for Calav-  
eras, \$284 for Colusa, \$313 for Contra Costa, \$285 for  
Del Norte, \$285 for El Dorado, \$295 for Fresno, \$288  
for Glenn, \$263 for Humboldt, \$208 for Imperial, \$271  
for Inyo, \$236 for Kern, \$273 for Kings, \$286 for Las-  
sen, \$350 for Los Angeles, \$253 for Madera, \$297 for  
Marin, \$279 for Mariposa, \$260 for Mendocino, \$267  
for Merced, \$292 for Modoc, \$286 for Mono, \$210 for  
Monterey, \$277 for Napa, \$263 for Nevada, \$308 for  
Orange, \$314 for Placer, \$276 for Plumas, \$243 for  
Riverside, \$378 for Sacramento, \$274 for San Benito,  
\$280 for San Bernardino, \$265 for San Diego, \$336 for  
San Francisco, \$292 for San Joaquin, \$226 for San Luis  
Obispo, \$303 for San Mateo, \$220 for Santa Barbara,  
\$286 for Santa Clara, \$252 for Santa Cruz, \$260 for  
Shasta, \$297 for Sierra, \$259 for Siskiyou, \$304 for So-  
lano, \$270 for Sonoma, \$354 for Stanislaus, \$291 for  
Sutter, \$280 for Tehama, \$288 for Trinity, \$222 for Tu-  
lare, \$279 for Tuolumne, \$280 for Ventura, \$286 for  
Yolo and \$286 for Yuba. A 25 percent surcharge is ad-  
ded to the base rate for unmarried male drivers ages 19  
through 24 years of age.

Annual premiums for optional uninsured motorists  
coverage, by county, are currently \$33 for Alameda,  
\$41 for Alpine, \$39 for Amador, \$33 for Butte, \$38 for

Calaveras, \$38 for Colusa, \$29 for Contra Costa, \$39 for Del Norte, \$36 for El Dorado, \$53 for Fresno, \$38 for Glenn, \$35 for Humboldt, \$33 for Imperial, \$38 for Inyo, \$31 for Kern, \$36 for Kings, \$39 for Lassen, \$67 for Los Angeles, \$42 for Madera, \$36 for Marin, \$39 for Mariposa, \$36 for Mendocino, \$36 for Merced, \$40 for Modoc, \$40 for Mono, \$32 for Monterey, \$35 for Napa, \$36 for Nevada, \$39 for Orange, \$35 for Placer, \$39 for Plumas, \$33 for Riverside, \$50 for Sacramento, \$37 for San Benito, \$41 for San Bernardino, \$27 for San Diego, \$25 for San Francisco, \$36 for San Joaquin, \$33 for San Luis Obispo, \$26 for San Mateo, \$31 for Santa Barbara, \$25 for Santa Clara, \$32 for Santa Cruz, \$35 for Shasta, \$41 for Sierra, \$38 for Siskiyou, \$32 for Solano, \$31 for Sonoma, \$46 for Stanislaus, \$36 for Sutter, \$37 for Tehama, \$39 for Trinity, \$44 for Tulare, \$37 for Tuolumne, \$32 for Ventura, \$36 for Yolo and \$41 for Yuba.

For optional medical payments coverage, by county, premiums are currently \$23 for Alameda, \$28 for Alpine, \$28 for Amador, \$28 for Butte, \$25 for Calaveras, \$28 for Colusa, \$22 for Contra Costa, \$27 for Del Norte, \$25 for El Dorado, \$44 for Fresno, \$26 for Glenn, \$25 for Humboldt, \$23 for Imperial, \$27 for Inyo, \$24 for Kern, \$26 for Kings, \$26 for Lassen, \$37 for Los Angeles, \$34 for Madera, \$26 for Marin, \$26 for Mariposa, \$27 for Mendocino, \$30 for Merced, \$27 for Modoc, \$27 for Mono, \$25 for Monterey, \$27 for Napa, \$25 for Nevada, \$31 for Orange, \$26 for Placer, \$26 for Plumas, \$18 for Riverside, \$30 for Sacramento, \$25 for San Benito, \$23 for San Bernardino, \$19 for San Diego, \$29 for San Francisco, \$30 for San Joaquin, \$23 for San Luis Obispo, \$21 for San Mateo, \$22 for Santa Barbara, \$19 for Santa Clara, \$25 for Santa Cruz, \$27 for Shasta, \$27 for Sierra, \$25 for Siskiyou, \$28 for Solano, \$26 for Sonoma, \$45 for Stanislaus, \$27 for Sutter, \$28 for Tehama, \$27 for Trinity, \$33 for Tulare, \$26 for Tuolumne, \$22 for Ventura, \$26 for Yolo and \$30 for Yuba.

In its rate recommendation for 2008, CAARP has proposed to increase rates for the liability, optional uninsured motorist and medical payments coverages referenced above. On average, CAARP's proposal would raise rates by 8.8%. The Commissioner will consider the current rates and CAARP's rate proposal and hereby invites public input regarding CAARP's proposal. Premium rates are specified in the program's Plan of Operations, approved by the Commissioner. California Code of Regulations, Title 10, Chapter 5, Section 2498.6 references this plan.

## **AUTHORITY TO ADOPT RATES AND REFERENCE**

Authority for the promulgation of rates is vested in the Insurance Commissioner pursuant to California Insurance Code Sections 11620, 11624, 11629.7, 11629.72, and 11629.79. Premium rates are referenced in Section 27 and Exhibit E of the Program's Plan of Operations. The proposed regulation implements, interprets, and makes specific Insurance Code sections 11629.72 and 11629.79. Government Code Section 11340.9(g) applies to this proceeding.

## **HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed rates at the following date, time, and place:

**Date and Time:** **September 24, 2008**  
**10:00 a.m.**

**Location:** **45 Fremont Street**  
**22<sup>nd</sup> Floor Hearing Room**  
**San Francisco, California 94105**

## **ACCESS TO HEARING ROOM**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

## **WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposed rates prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Bryant Henley, Senior Staff Counsel  
California Department of Insurance  
Legal Division  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[henleyb@insurance.ca.gov](mailto:henleyb@insurance.ca.gov)  
Telephone: (415) 538-4111  
Facsimile: (415) 904-5490



The backup agency contact person for this proceeding will be:

Sara Urakawa, Staff Counsel  
California Department of Insurance  
Legal Division  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[urakawas@insurance.ca.gov](mailto:urakawas@insurance.ca.gov)  
Telephone: (415) 538-4121  
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

#### DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on September 24, 2008**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Written comments shall be submitted by one method only.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Insurance Code Sections 11629.7 through 11629.85 establish, within the California Automobile

Assigned Risk Plan, established under Section 11620 of the Insurance Code, a statewide Low Cost Automobile Insurance Program.

Because the program is established and administered through the California Automobile Assigned Risk Plan ("CAARP"), CAARP procedures are applied where appropriate and consistent with the low cost automobile insurance statutes. Insurance Code Sections 11620 and 11624 require the Commissioner to hold a public hearing before amending assigned risk plan rates.

Section 11629.7 of the Insurance Code requires that, after a public hearing, the Commissioner shall approve or issue a reasonable plan for the equitable apportionment, among insurers, of eligible consumers. The plan also contains rules and rates. This plan, approved by the Commissioner, is referenced in Title 10, Section 2498.6 of the California Code of Regulations.

Under the program, the low-cost auto policy satisfies financial responsibility laws and provides coverage of \$10,000 for liability for bodily injury or death to one person, subject to a cumulative limit of \$20,000 for all persons in one accident, and \$3,000 for liability for damage to property. In addition to eligibility and other requirements, the statute sets forth the annual premium rates. In certain cases, surcharges are added to the base rate. The statute also provides procedures for adjusting the rates.

Insurance Code Section 11629.72(c) provides that, annually, CAARP shall submit to the Commissioner a proposed rate and surcharge for approval. Accordingly, CAARP has submitted a proposal to maintain current rates for the liability policy and optional coverages and further proposes to maintain the 25 percent surcharge rate. Further details appear in the application on file with the Commissioner, which is available for review as set forth below.

#### COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

#### LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

#### COST OR SAVINGS TO STATE OR LOCAL AGENCIES/SCHOOL DISTRICTS/FEDERAL FUNDING

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any state agency or to any local

agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other non-discretionary costs or savings to local agencies. Nor will the proposal affect federal funding to the state.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

Because the proposal involves rates for private passenger automobiles, the Insurance Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

#### COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner has initially determined that the proposal will not impact businesses, but will have a potential cost impact on private persons directly affected.

#### IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

#### EFFECT ON SMALL BUSINESSES

The Insurance Commissioner has initially determined that the proposal will have minimal, if any, effect on small businesses and invites comments.

#### SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

#### ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or

would be as effective as and less burdensome to affected private persons than the proposed action.

The agency invites interested persons to present statements or arguments with respect to the proposed rate, or other alternatives, at the scheduled hearing or during the written comment period.

#### PLAIN ENGLISH

The rate application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

#### TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the rate proposal, in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, the text of regulations, and all the information upon which this proposal is based are available for inspection or copying, and will be provided at no charge upon request to a contact person listed above. Further details of CAARP's rate application are on file with the Commissioner and available for review as set forth below.

#### QUESTIONS REGARDING REGULATIONS/ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of the proposed rate application. **By prior appointment**, CAARP's Low Cost Automobile rate application is available for inspection at the public viewing rooms at 45 Fremont Street, 22nd Floor, San Francisco, California 94105 by calling (415) 538-4300, and at the Ronald Reagan State Building, 300 South Spring Street, Los Angeles, CA 90013 by calling (213) 346-6707 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday. Interested persons may direct questions about the proposed rate application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont, 21<sup>st</sup> Floor, San Francisco, California 94105 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

#### AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the



original text that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

#### FINAL STATEMENT OF REASONS

Once prepared, the Final Statement of Reasons will be made available through the contact persons listed above.

#### AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. On the right-hand column of the page, click the drop-down menu under the heading 'For Insurers.' In this section, scroll down until you see the subheading 'Regulations.' Below this subheading, click on the 'Proposed Regulations' link and then click on the 'Search for Proposed Regulations' link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2008-00010" (the Department's regulation file number for these regulations) in the 'Search for' field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "11624"), or search by keyword ("low cost," for example). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Statistical Plan Enforcement Remedies' link, and click it. Links to the documents associated with these regulations will then be displayed.

## TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

### NOTICE OF PROPOSED REGULATORY ACTION

#### POST Basic Courses Test Administration and Security Agreement Guidelines Regulations 1005, 1007, 1008, and 1052, and Procedures D-1 and D-10

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code §11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

**Public Comments Due by September 8, 2008, at 5:00 p.m.**

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by FAX at 916.227.5271 or by letter to the:

Commission on POST  
Attention: Dave Spisak  
1601 Alhambra Boulevard  
Sacramento, CA 95816-7083

Following the close of the public comment period, the Commission may adopt the proposal substantially as described below or may modify the original proposal with sufficiently related changes. With the exception of technical or grammatical changes, the full text of a modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as the contact person. The Commission will also mail the full text to persons who submit written comments related to the proposal or who have requested notification of any changes to the proposal.

#### Authority and Reference

This proposal is made pursuant to the authority vested by Penal Code §13503 — POST powers and §13506 — POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code §13503(e) which authorizes POST to develop and implement programs for increasing the effectiveness of law enforcement, including programs involving training and education courses; and Penal Code §13517.7 which authorizes POST to develop guidelines and training for use by state and local law en-

forcement officers to address issues related to child safety when a caretaker parent or guardian is arrested.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

POST currently requires all presenters of the Regular Basic Course to enter into a formal test security agreement with POST. The *POST Basic Courses Test Use and Security Agreement* identifies the terms and conditions under which a presenter may acquire and use specific POST-constructed knowledge, scenario, and exercise tests.

With this notice, POST proposes to implement a requirement for written policies and procedures regarding test administration and test security, including sanctions for not complying with this regulation. This will apply to all POST basic course presenters who have access to POST-developed and POST-supplied tests. The purpose of this proposal is to ensure the integrity and safe handling of POST-developed and POST-supplied tests.

In 2003, POST staff investigated a basic academy presenter for violations of the *POST Basic Courses Test Use and Security Agreement*. In that case, the act of providing students with answers to high-stakes written tests prior to the test administration compromised several test forms. After an extensive investigation into the nature and extent of the test security issues, POST decertified the basic academy presenter involved in the violation.

POST discussed several test security issues with the Consortium of California Academy Directors. The Consortium examined the issues and appointed an ad hoc committee on test security to draft policy and procedure guidelines for implementation by consortium member academies. The guidelines were created to assist in preventing occurrences like those at the decertified academy.

In September 2004, the Consortium approved the draft *Basic Course Test Administration and Security Guidelines* and invited academies to voluntarily comply with the guidelines for one year. It was agreed that after that time, the Consortium would decide whether the guidelines should be mandatory or voluntary. In December 2005, following the one-year trial period, the Consortium proposed that the guidelines become mandatory. The Commission approved this proposal and related regulation and procedure changes at its April 2006 Commission meeting. Subsequently, POST published the regulatory changes and the new guidelines document for public comment and adoption into POST regulations.

After additional review, staff found the guidelines insufficient because they applied only to Regular Basic

Course presenters. To reduce the likelihood of test security violations, the test administration and security requirements must extend to all basic courses and presenters having access to POST-supplied test materials. This includes presenters of the Regular Basic Course, the Specialized Investigators' Basic Course, the PC 832 Arrest and Firearms Course, and the Requalification Course. In April 2008, the Commission approved expanding the policy requirement to presenters of all basic courses. This action corrected related inconsistencies in the previously submitted document.

The changes made to Regulations 1005, 1007, 1008, 1052, and Procedure D-10 will:

- Either correct or add the location of references and make one grammatical change.
- Add new effective dates to the incorporation by reference statements for historical accuracy.
- Incorporate the *POST Basic Courses Test Administration and Security Guidelines — 2009* publication by reference.
- Require that the presenters of the POST Regular Basic Course, the Specialized Investigators' Basic Course, the PC 832 Arrest and Firearms Course, and the Requalification Course to establish and comply with a test administration and security policy.
- Require compliance with *POST Basic Courses Test Administration and Security Guidelines — 2009*.
- Specify sanctions for failure to establish the policy and/or to comply with the policy as specified in the new *POST Basic Courses Test Administration and Security Guidelines — 2009*.

A revised version of the guidelines previously published and the related regulatory and procedure changes is now submitted for public comments. The implementation of these guidelines and the regulation and procedure change will greatly reduce the likelihood of compromised or misused testing material by ensuring that all presenters have published policies and procedures specifically designed to control test use and administration at local sites. They will also ensure the continued integrity of entry-level law enforcement training. POST will protect its tests, which are expensive to develop and to maintain, while assisting academies to adhere to this regulation. Implementation is proposed for January 1, 2009.

### Local Mandate

This proposal does not impose a mandate on local agencies or school districts.

### Fiscal Impact Estimates

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with

§17500) of the Government Code, Division 4. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

#### **Costs or Savings to State Agencies**

POST anticipates no additional costs or savings to state agencies.

#### **Business Impact/Small Businesses**

The Commission has made an initial determination that this regulatory proposal would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses, as defined by Government Code §11342.610, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.

#### **Assessment Regarding Effect on Jobs/Businesses**

The Commission has determined that this regulatory proposal will not have any impact on the creation or elimination of jobs and will not result in the elimination of existing businesses or the creation or expansion of businesses in the State of California.

#### **Cost Impacts on Representative Private Persons or Businesses**

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **Effect on Housing Costs**

None

#### **Alternatives**

The Commission must determine that no reasonable alternative considered by the agency, or otherwise identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as, and less burdensome to, affected private persons than the proposed action.

#### **Contact Persons**

Please direct inquiries or written comments about the proposed regulatory action to the following:

Dave Spisak  
Commission on POST  
1601 Alhambra Boulevard  
Sacramento, CA 95816-7083  
916.227.0539 or [Dave.Spisak@post.ca.gov](mailto:Dave.Spisak@post.ca.gov)  
916.227.5271 (FAX)

or

Jennifer Imlay  
Commission on POST  
1601 Alhambra Boulevard  
Sacramento, CA 95816-7083  
916.227.3917 or [Jennifer.Imlay@post.ca.gov](mailto:Jennifer.Imlay@post.ca.gov)

#### **Text of Proposal**

Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at 1601 Alhambra Boulevard, Sacramento, CA 95816. These documents are also located on the POST website at: <http://www.post.ca.gov/RegulationNotices/RegulationNotices.asp>.

#### **Availability and Location of the Rulemaking File and the Final Statement of Reasons**

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person(s) named above. To request a copy of the Final Statement of Reasons once it has been prepared, submit a written request to the contact person(s) name above.

## **TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION**

### **Board of Forestry and Fire Protection Title 14 of the California Code of Regulations**

[Published July 25, 2008]

#### **NOTICE OF PROPOSED RULEMAKING**

### **Evaluation for "Take" Avoidance of Northern Spotted Owl, 2008**

#### **Title 14 of the California Code of Regulations (14 CCR):**

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

#### **Amend**

§ 895	Abbreviations Applicable Throughout Chapter
§895.1	Definitions
§ 919.9, 939.9	Northern Spotted Owl
§ 919.10, 939.10	Take of Northern Spotted Owl

## PUBLIC HEARING

The Board will hold a public hearing starting at 9:00 a.m., on Wednesday, September 10, 2008, at the Resources Building Auditorium, 1<sup>st</sup> Floor, and 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code section 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

## WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m., Monday, September 8, 2008. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

## AUTHORITY AND REFERENCE

Public Resources Code (PRC) 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561, 4584 and 21080.5.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulation provides the California Department of Forestry and Fire Protection (CAL FIRE) a mechanism for obtaining biological expertise to assist in ensuring all plans located within the range of the northern spotted owl incorporate enforceable protection measures for the species. The proposed regulation ensures that (1) harvest activities do not result in the incidental take of a northern spotted owl; and (2) Plans are approved in an efficient and timely manner.

## SPECIFIC PURPOSE OF THE REGULATION

The purpose of the proposed regulation is to provide CAL FIRE a mechanism for obtaining biological expertise to assist in the process and still maintain scientific integrity in the review process. The proposed regulation is necessary to ensure that (1) harvest activities do not result in the incidental take of a northern spotted owl; and (2) Plans are approved in an efficient and timely manner.

### Section 895 Abbreviations.

This section adds abbreviations for new definitions for 1) Activity Center, 2) Northern Spotted Owl Breeding Season, and 3) Qualified Spotted Owl Consultant. The abbreviations are necessary for clarity and brevity of rules.

### Section 895.1 Definitions

This section adds three new definitions: 1) Activity Center, 2) Northern Spotted Owl Breeding Season, and 3) Qualified Spotted Owl Consultant. The definition for "Activity Center" establishes criteria for determining occupancy or absence of the northern spotted owl. This definition is needed to effectuate certain northern spotted owl protection requirements stated in section 916.9(g) and (g)(1)-(4).

The definition for "Northern Spotted Owl Breeding Season" establishes the annual period during any year when northern spotted breeding is likely to occur. This definition is needed to effectuate certain northern spotted owl protection requirements stated in section 916.9 (g) and (g)(1)-(2).



The definition for “Qualified Spotted Owl Consultant” describes the type of qualifications, training and expertise necessary for a person to be designated as a consultant to CAL FIRE for northern spotted owl habitat assessments and recommendations on whether proposed protection measures will result in a “take”. The definition is needed to ensure professional and credentialed personnel are assisting CAL FIRE on northern spotted owl protection measures.

#### **Section 919.9 [939.9] Northern Spotted Owl**

The first paragraph of this section deletes existing reference to “State Employed Biologist”, and their necessary qualifications. It replaces this term with “Qualified Spotted Owl Consultant”. The amendment is necessary because the director needs qualified, professional advice on northern spotted owl protection requirements and the State does not have access to qualified State employed biologists due to fiscal constraints.

Other amendments to section 919.9 [939.9] involve 1) replacing the term “State Employed Biologist” with the abbreviation for “Qualified Spotted Owl Consultant”, and describing how the consultant will be used, and 2) adding nonsubstantive edits for consistency for section numbering and clarification of the terms used for naming the Department of Fish and Game.

The amendment to section 919.9 [939.9](g)(2) establishes additional operating restrictions within 500 to 1000 feet of an active nest site or pair activity center. This amendment is necessary to ensure protection during the breeding season and qualified entities (DFG or a QSOC) are reviewing operations to ensure a “no take” determination.

#### **Section 919.10 [939.10] Take of Northern Spotted Owl**

Similar to amendments in 919.9, this section deletes existing references to a “designated biologist” and replaces this term with “Qualified Spotted Owl Consultant”. The amendments are necessary as stated in section 919.9 above.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.

- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulation does not impose any new operational or plan preparation requirements that would result in an adverse cost impact.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business because the proposal adds no new operational or plan preparations cost.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

#### **BUSINESS REPORTING REQUIREMENT**

The regulation does not require a report, which shall apply to businesses.

#### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone (916) 653-5602.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action, using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKE-THROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html)

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or

- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### TITLE 15. CORRECTIONS STANDARDS AUTHORITY

#### NOTICE OF PROPOSED AMENDMENT TO TITLE 15, MINIMUM STANDARDS FOR LOCAL DETENTION FACILITIES, CALIFORNIA CODE OF REGULATIONS, BY THE STATE CORRECTIONS STANDARDS AUTHORITY

Pursuant to Penal Code 6030, the State Corrections Standards Authority (CSA) hereby gives notice of the proposed regulatory action(s) described in this public notice. It is the intent of the CSA to amend and adopt the regulations contained in Title 15, Division 1, Subchapter 4, California Code of Regulations (known as the Minimum Standards for Local Detention Facilities), after considering all comments, objections, and recommendations regarding these regulations.

#### PUBLIC HEARING

The CSA will hold the following public hearings:

**Wednesday, September 3, 2008**  
**09:00 a.m.**

Corrections Standards Authority  
660 Bercut Drive  
Sacramento CA 95811

**Thursday, September 11, 2008**  
**09:00 a.m.**

San Diego Sheriff's Department  
Headquarters  
9621 Ridgehaven Court  
San Diego CA 92123

Both locations are wheelchair accessible. At the hearings, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The CSA requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The hearing will remain open only as long as persons in attendance are presenting testimony.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the

proposed regulatory action to the CSA. The written comment period closes at **5:00 p.m. on September 8, 2008**. The CSA will consider only comments received at CSA offices by that time. Submit comments to:

Allison Ganter, Field Representative  
600 Bercut Drive  
Sacramento CA 95811  
(916) 445-5073  
[allison.ganter@cdcr.ca.gov](mailto:allison.ganter@cdcr.ca.gov)

Ron Bertrand, Field Representative  
600 Bercut Drive  
Sacramento CA 95811  
(916) 445-5073  
[ron.bertrand@cdcr.ca.gov](mailto:ron.bertrand@cdcr.ca.gov)

## AUTHORITY AND REFERENCE

Penal Code Section 6030 authorizes the CSA to adopt and amend the proposed regulations, which would implement, interpret, or make specific Sections 6029 and 6030 of the Penal Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### Summary of Existing Laws

Sections 6029 and 6030 of the California Penal Code authorize the Corrections Standards Authority to establish standards for local adult and juvenile detention facilities. The standards shall include but not be limited to the following: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in local detention facilities and personnel training. Section 6030 requires the Corrections Standards Authority to review such standards biennially and make any appropriate revisions.

### Summary of Existing Regulations

Existing standards which prescribe requirements for local detention facilities are promulgated by the Corrections Standards Authority. These regulations are contained in Title 15 — Crime Prevention and Corrections, Division 1, Chapter 1, Subchapter 4 of the California Code of Regulations (CCR).

### Summary of Effect

The proposed action would update Title 15, Division 1, Chapter 1, Subchapter 4 CCR adopting new and revised definitions to add clarity to the regulations; update reference to the Board of Corrections to Corrections Standards Authority to reflect legislative change; require facility administrators to comprehensively review policy and procedures every two years rather than

annually; update reference to State Fire Marshal inspections; allow a facility manager's designee to accept incident reports in his/her stead; update reference to Building Standard Commission regulatory citations; delete requirements for reporting the use of force for DNA collection to the CSA due to this requirement sunset; update regulations regarding correspondence for clarity; updating regulations to include writing with books, newspapers and periodicals and clarify the intent of the regulation regarding such publications; correct grammatical errors; update regulations regarding contact between adult inmates and minors to ensure consistency with state and federal statute; delete outdated reference to minors under 16 in adult jails; clarify the requirements for obtaining a medical clearance for minors in temporary holding facilities and lockups; clarify the requirements for a facility that elects to implement provisions for transfer to a mental health facility; revise requirements for administering involuntary psychotropic medication; update references to the California Retail Food Code; correct an error from past revisions regarding minimum diet; update references to the correct Dietary Guide; and, update reference to test standards for penal mattresses. The effect of the proposed changes is further described below.

### Comparable Federal Statute or Regulations

There are no comparable federal regulations or statutes.

### Policy Statement Overview

The broad objective of the proposed action is to maintain regulations for local adult detention facilities in conformance with sound correctional practices and to ensure the safe and secure detention of incarcerated persons.

**1004. Severability.** This regulation describes the severability of an unconstitutional or contrary regulation. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1006. Definitions.** This regulation defines terms used throughout these regulations. To provide clarity and consistency to these regulations, five have been amended, and one has been deleted.

**1007. Pilot Projects.** This regulation describes the requirements if a facility elects to apply for a pilot project. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1008. Alternate Means of Compliance.** This regulation describes the requirements if a facility elects to apply for an Alternate Means of Compliance. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.



**1012. Emergency Suspension of Standards.** This regulation outlines the steps that must be taken to suspend applicability of standards in the event of an emergency. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1013. Criminal History Information.** This regulation allows certain information to be accessible to CSA staff. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1018. Appeal.** This regulation outlines the appeal process if a jurisdiction does not agree with the application of a particular standard. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1027. Number of Personnel.** This regulation outlines the requirements for staffing and safety checks in a detention facility. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1028. Fire and Life Safety Staff.** This regulation requires that there be at least one staff member trained in fire and life safety on duty at all times in a detention facility. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1029. Policy and Procedures Manual.** Current regulations require that the facility manager develop and publish a manual of policies and procedures and requires that this manual be updated at least annually. The proposed revision would extend this process to every two years and adds the term “comprehensively reviewed” to the process to allow necessary time for such a review.

**1032. Fire Suppression Preplanning.** This regulation outlines the requirements for a facility’s fire suppression preplan. Revisions bring the regulation in line with current Health and Safety Code requirements for biennial fire prevention inspections. There is no operational impact.

**1040. Population Accounting.** This regulation describes the requirements for population accounting systems. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1044. Incident Reports.** Current regulation requires that a written record of all incidents which result in physical harm, or serious threat of physical harm, to an employee or inmate of a detention facility or other person shall be submitted to the facility manager within 24 hours of the event of the incident. Proposed revisions add the words “or his/her designee” to regulation to allow the facility manager to designate a subordinate to accept the written record; the facility manager may be in

a higher-level position and may not be the individual who actually reviews the report within 24 hours. There is no operational change.

**1045. Public Information Plan.** This regulation describes the information that must be made available to both inmates and the public. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

Revisions also update reference to Title 15, Section 1066; the title of this regulation was revised.

**1046. Death in Custody.** This regulation outlines specific procedures in the event of a death in custody. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1055. Use of Safety Cell.** This regulation describes the requirements for use of a safety cell. Proposed revisions update the reference to Safety Cells in Title 24; the code sections were recently revised by the Building Standards Commission.

**1056. Use of Sobering Cell.** This regulation describes the requirements for use of a sobering cell. Proposed revisions update the reference to Sobering Cells in Title 24; the code sections were recently revised by the Building Standards Commission.

**1059. DNA Collection, Use of Force.** Current regulations require that a report be submitted to the CSA within 10 days whenever reasonable force is used to collect specimens, samples or prints to comply with Penal Code Section 298.1. The original intent of the reporting requirement was to provide a means for the Corrections Standards Authority to collect data from the agencies to meet the requirements of PC 298.1 to report to the legislature by January 1, 2005. Proposed revisions delete section 1059(b)(2) as there are no future reporting requirements by the CSA to the legislature. Additional revisions update the numbering in the regulation for consistency.

**1063. Correspondence.** This regulation delineates the requirements for inmate correspondence. The recommended changes add provision for the facility manager to designate staff to determine when a valid security reason would require mail to be read. Changes also delete reference to inmates confidentially corresponding with certain public officials. This change does not change the intent of the regulation, since mail should not be read in any situation unless a valid security reason exists; however, the confidentiality of such correspondence cannot be guaranteed in the event that there is a valid security reason and also cannot be guaranteed once the correspondence leaves the facility.

Revisions also replace Board of Corrections with Corrections Standards Authority; there is no operational impact.



**1066. Books, Newspapers, and Periodicals, and Writings.** This regulation outlines what reading material is allowed in certain facilities and delineates some restrictions on such material. Revisions include adding “Writings” to the title and require facility administrators to include writings in the types of reading material that an inmate may receive. Revisions add a new section 1 which captures the intent of the original section 2, which excludes reading material if there is a legitimate penological interest.

Language is added to the new section 2 (originally section 1) to include that material may be excluded if it contains information on unlawful activities. There is no operational impact; these changes clarify the intent of the regulation, and the options available to facility administrators.

**1082. Forms of Discipline.** This regulation describes the limitations that may be placed on disciplinary actions. Proposed revisions correct a grammatical error.

**1101. Restrictions on Contact with Adult Prisoners.** Current regulations restrict contact between detained minors and adults and specify situations in which they can be in the same room, area or corridor. Proposed revisions incorporate language that is consistent with the Juvenile Justice and Delinquency Prevention Act and clarify that contact must be brief or accidental and further require that side-by-side supervision must occur to assure that communication does not occur.

The revisions also delete the option of routinely using inmate workers in areas where minors are present; this is in direct conflict with both federal and state statute.

**1105. Recreation Programs.** This regulation outlines the requirements for recreation for minors that may be housed in an adult facility. The changes delete the requirements for recreation for minors under 16 since statute prohibits minors under 16 to be housed in an adult jail. The language relative to minors who are 16 or older was deleted, since there is no need for specific reference to age once the minors who are under 16 were deleted from the regulation. There is no anticipated operational impact.

**1144. Contact Between Minors and Adult Prisoners.** Current regulations restrict contact between detained minors and adults and specify situations in which they can be in the same room, area or corridor. Proposed revisions incorporate language that is consistent with the Juvenile Justice and Delinquency Prevention Act and clarify that contact must be brief or accidental and further require that side-by-side supervision must occur to assure that communication does not occur.

The revisions also delete the option of routinely using inmate workers in areas where minors are present; this is in direct conflict with both federal and state statute.

**1151. Intoxicated and Substance Abusing Minors in a Lockup.** Current language requires a medical

clearance prior to reception at the facility for any minor who displays outward signs of intoxication or who is known or suspected to have ingested any substance that could result in a medical emergency. Proposed revisions would require facility administrators to have policies and procedures to ensure that a medical clearance is obtained for minors who are intoxicated, by any substance, to the extent that they are unable to care for themselves.

Additionally, proposed revisions clarify that minors in secure detention must have documented safety checks **no less than** every 15 minutes pending release or a resolution of the intoxicated state and that minors in non-secure detention must remain under constant observation, as required by Section 1150.

**1161. Conditions of Detention.** This regulation specifies the conditions of detention for minors in Court Holding Facilities. The revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1209. Mental Health Services and Transfer to Treatment Facility.** This regulation requires the health authority, in cooperation with the facility administrator, to develop policies and procedures to provide mental health services. In addition, it references statutory language that states that a mentally disordered inmate who appears to be a danger to himself or others, or to be gravely disabled, shall be transferred for further evaluation to a designated Lanterman Petris Short treatment facility.

If the county Board of Supervisors authorizes the administration of involuntary medication inside their local adult detention facility, it will require some changes in facility operations to ensure the safety and security of inmates being involuntarily treated. The proposed revisions outline the requirements that the health authority and facility manager must follow when implementing Penal Code Section 1369.1. The changes will only affect those counties who elect to implement the statute’s requirements.

**1217. Psychotropic Medications.** This regulation outlines the requirements for the administration of psychotropic medications. If the county elects to provide on-site emergency psychotropic medications, proposed revisions will require both policy regarding a physician responding to the facility to conduct a clinical evaluation or conduct a clinical evaluation on the telephone and an agreement with a physician to provide this service. It is expected that most small, rural facilities without twenty-four hour nursing will not administer involuntary medications. The current practice in these locations is to transport the inmate to a community emergency department.

**1230. Food Handlers.** This regulation requires the responsible physician to develop policy and procedures

for inmate food service workers, including adherence to statute. The changes involve non-substantive code and section reference changes only; there is no operational impact.

**1241. Minimum Diet.** This regulation outlines the references that facility managers should use when developing the diet. Proposed revisions include updating reference to the most current Dietary Guidelines for Americans.

Proposed revisions also update the amount of retinal equivalents in subsection (c) from 2000 to 200. 200 RE is the correct amount; however, it appeared as 2000 in the published version of Title 15.

Additional revisions include deleting the specific examples for bread and cereal products; this section was erroneously omitted from the previous regulation revisions and remained in the 2005 regulations. There is no operational change.

**1243. Food Service Plan.** This regulation outlines the items to be included in a facility's food service plan. Changes include non-substantive code and section reference changes only. There is no operational change.

**1245. Kitchen Facilities, Sanitation, and Food Storage.** This regulation outlines specific requirements and statutory references for sanitation and food service in kitchen facilities. Proposed revisions update relevant code and section reference changes only; there is no operational impact.

**1247. Disciplinary Isolation Diet.** This regulation outlines the requirements to be followed if an inmate is placed on a disciplinary diet. Proposed revisions replace Board of Corrections with Corrections Standards Authority; there is no operational impact.

**1262. Clothing Exchange.** This regulation requires written policy and procedures for scheduled clothing exchange and cite reference to statute for certain clothing exchange. Proposed revisions update the title of the new California Retail Food Code; there is no operational change.

**1272. Mattresses.** This regulation describes the requirements for mattresses in a detention facility. The proposed language will clarify that mattresses meet applicable standards at the time of purchase, rather than citing a specific standard that may be out of date. There is no operational impact.

#### DISCLOSURE REGARDING THE PROPOSED ACTION

The CSA has made the following initial determinations:

Mandate on local agencies and school districts: None.  
Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None

Other nondiscretionary costs or savings imposed on local agencies: None

Costs or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The CSA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California

Significant effect on housing costs: None.

*Small Business Determination:*

The CSA has determined that the proposed regulations will have no effect on small businesses. These proposed regulations affect the operations and programs for Local Adult Detention Facilities.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the CSA must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The CSA invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearings or during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Allison E. Ganter, Field Representative  
600 Bercut Drive  
Sacramento, CA 95814  
(916) 445-5073  
[allison.ganter@cdcr.ca.gov](mailto:allison.ganter@cdcr.ca.gov)

Ron Bertrand, Field Representative  
600 Bercut Drive  
Sacramento, CA 95811  
(916) 445-5073  
[Ron.bertrand@cdcr.ca.gov](mailto:Ron.bertrand@cdcr.ca.gov)

Questions on the substance of the proposed regulation may be directed to either Ms. Ganter or Mr. Bertrand.

Please direct requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which this rulemaking is based to Allison Ganter or Ron Bertrand at the above address.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Rulemaking File, which includes all the information on which this proposal is based, is available for viewing at the CSA's office at the above address.

#### AVAILABILITY OF MODIFIED TEXT

If the CSA makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the CSA adopts the regulations as revised.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be accessed through the CSA website at [http://www.cdcr.ca.gov/Divisions\\_Boards/CSA/](http://www.cdcr.ca.gov/Divisions_Boards/CSA/). Those persons who do not have access to the Internet may submit a written request to Allison Ganter or Ron Bertrand at the above address.

#### AVAILABILITY OF DOCUMENTS; INTERNET ACCESS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in strikeout and underline can be accessed through our website at [http://www.cdcr.ca.gov/Divisions\\_Boards/CSA/](http://www.cdcr.ca.gov/Divisions_Boards/CSA/). Those persons who do not have access to the Internet may submit a written request to Allison Ganter or Ron Bertrand at the above address.

## TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

### NOTICE OF EMERGENCY REGULATIONS

#### California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

**NOTICE IS HEREBY GIVEN** that the Secretary of the Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5058, and the rulemaking authority granted by PC Sections 5058.3, in order to implement, interpret and make specific PC Sections 5054, proposes to amend Section 3000 and adopt Section 3334 of the California Code of Regulations (CCR), Title 15 concerning the Behavior Management Unit (BMU).

#### PUBLIC HEARING

Date and Time: **September 18, 2008, from 9:00 a.m. — 10:00 a.m.**  
Place: Correctional Standards Authority  
660 Bercut Dr.  
Large Conference Room  
Sacramento, CA 95814  
Purpose: To receive comments about this action.

#### PUBLIC COMMENT PERIOD

The public comment period will close 5:00 p.m. on September 18, 2008. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or by e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

#### CONTACT PERSON

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 341-7390**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Fernando Azevedo**  
**Correctional Lieutenant**  
**Regulation and Policy Management Branch**  
**Telephone (916) 323-6156**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Nancy Hardy**  
**Associate Warden**  
**Division of Adult Institution, High Security & Transitional Housing**  
**Telephone (916) 323-4223**

#### LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

#### FISCAL IMPACT STATEMENT

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

#### EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

#### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has initially determined that the proposed regulations will not have a significant statewide

adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

#### ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

#### CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action.

#### AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.



## AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340. This regulatory action:

- Recognizes the Department has identified a need to take immediate and appropriate corrective action to prevent inmates from their involvement in disruptive behavior, violence, refusal to participate in inmate programs, or continued noncompliance with CDCR rules and regulations. As a result, the Behavior Modification Unit (BMU) Pilot Program was implemented pursuant to Penal Code Section 5058.1 on November 21, 2005. This program is designed to modify recalcitrant inmate behavior, reduce the opportunity to repeat the behavior, and provide non-disruptive inmates the ability to program

without continual interruption. The name of the program was changed from its pilot name, Behavior Modification Unit, to Behavior Management Unit (BMU).

- Will allow the department to provide alternate General Population (GP) housing and programming for those inmates who are deemed program failures, who participate in gang activity, who refuse to participate in racial integration, who refuse to double cell, and those released from the Administrative Segregation Unit/Security Housing Unit (ASU/SHU). This alternate GP housing will allow GP inmates desiring to program without violence or disruptive conduct to do so unaffected by a smaller, more disruptive segment of the inmate population.
- Will amend and adopt regulations to permanently implement the BMU. These proposed amendments will give staff the tools to carry out the application of the BMU in a fair and consistent manner.
- Will have a positive impact on controlling and rewarding inmate behavior. These changes will also further the safety of all persons and the legitimate penological interests of the institutions.
- Will amend the current CCR with language which has been written for clarity and clear reference by staff, inmates, and the public in general.

## TITLE 18. BOARD OF EQUALIZATION

### NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by section 15606, subdivision (a), of the Government Code, proposes to amend sections 1602, *Food Products*, and 1591, *Medicines and Medical Devices*, in Title 18, Division 2, Chapter 4, Articles 19 and 20 of the California Code of Regulations, relating to regulatory changes to the processes for clarifying the manner in which tax applies to sales of dietary supplement and adjunct products that are furnished by a physician as part of a medically supervised weight loss program to treat obesity. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Wednesday, September 17, 2008. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by September 17, 2008.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Sales and Use Tax Regulation 1602, *Food Products*, specifies that tax does not apply to products which either are otherwise exempted respecting prescription medicines or are complete dietary foods providing the user in the recommended daily dosage with substantial amounts of vitamins, proteins, minerals and foods providing adequate caloric intake. Sales and Use Tax Regulation 1591, *Medicines and Medical Devices*, specifies that when vitamins, minerals, herbs, and other such supplements are used in the cure, mitigation, treatment or prevention of disease, and are commonly recognized as a substance or preparation intended for such use, they will qualify as medicines for the purposes of Revenue and Taxation Code section 6369. Consequently, their sale or use is not subject to tax when sold or furnished under specified conditions.

The proposed amendments would amend regulation 1602 to clarify that when dietary supplement and adjunct products do not meet the definition of food under 1602(a)(4) and are furnished by a physician to his or her own patient as part of a medically supervised weight loss program to treat obesity, such products are regarded as “medicine”. The proposed change to Regulation 1591 would add new subdivision (e)(7) to explain that when a dietary supplement or adjunct product does not qualify as food product, it qualifies as a medicine under certain conditions.

## COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments and regulations will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

## EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5, subdivision (a)(8), the Board of Equalization makes an initial determination that the adoption of the amendments to Regulations 1602 and 1591 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The amendments to the regulations as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulations may affect small business.

## COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

## FEDERAL REGULATIONS

Regulations 1602 and 1591 and the proposed changes have no comparable federal regulations.

## AUTHORITY

Section 7051, Revenue and Taxation Code.

## REFERENCE

Sections 6091, 6343 and 6359, Revenue and Taxation Code; Sections 6006 and 6359, Revenue and Taxation Code, and sections 1200, 1200.1, 1204.1 and 2250 Health and Safety Code.

## CONTACT

Questions regarding the substance of the proposed regulation should be directed to Mr. Tim Treichelt (916) 324-2640, at 450 N Street, Sacramento, CA 95814, e-mail [Tim.Treichelt@boe.ca.gov](mailto:Tim.Treichelt@boe.ca.gov) or MIC:85, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082.

Written comments for the Board’s consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

**ALTERNATIVES CONSIDERED**

The Board determined that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

**AVAILABILITY OF INITIAL  
STATEMENT OF REASONS AND  
TEXT OF PROPOSED REGULATION**

The Board has prepared an initial statement of reasons and an underscored and strikethrough version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's Web site <http://www.boe.ca.gov>.

**AVAILABILITY OF FINAL  
STATEMENT OF REASONS**

The final statement of reasons will be made available on the Internet at the Board's Web site following its public hearing of the proposed regulation. It will also be available for public inspection at 450 N Street, Sacramento, California.

**ADDITIONAL COMMENTS**

Following the hearing, the State Board of Equalization may, in accordance with the law, adopt the proposed regulations if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

**TITLE 21. DEPARTMENT OF  
TRANSPORTATION****NOTICE OF PROPOSED RULEMAKING****TO ALL INTERESTED PERSONS**

The California Department of Transportation ("Department") proposes to adopt the proposed regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Department has not scheduled a public hearing on this proposed action.

However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, no later than 15 days before the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on September 8, 2008. The department will consider only comments received at the Department by that time. Please submit comments to:

Gordon Arruda  
Department of Transportation  
Division of Mass Transportation  
1120 'N' Street, MS 39, Room 3300  
Sacramento, CA 95814

**AUTHORITY AND REFERENCE**

Public Utilities Code section 99241 authorizes the Department to adopt proposed regulations, with the advice and consent of the California Transportation Commission (CTC), which would implement, interpret, or make specific Public Utilities Code sections 99246, and 99314.5.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

The Department proposes to amend section 6633.2 in Title 21 of the California Code of Regulations.

Public Utilities Code section 99241 authorizes and requires the Department to promulgate regulations to enforce the Transportation Development Act (Public Utilities Code sections 99200 et seq.). The existing regulations were enacted in 1979 and have been amended several times to implement State and Federal statutory and regulatory authority.

This proposed regulatory action will bring the regulations into conformance with recent State statutory amendments to the Public Utilities Code.

Section 6633.2 covers the requirement of an operator or transit service claimant to meet the required ratio of fare revenues to operating cost in order to qualify for TDA funding. The proposed amendment is to reflect recently enacted amendments to the provisions of the controlling statute, Public Utilities Code section 99268.17.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

*The Department has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, inclusive: None.

Other non-discriminatory costs or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: None.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) Create or eliminate jobs within the State of California;
- (2) Create new businesses or eliminate existing businesses within the State of California; or
- (3) Affect the expansion of businesses currently doing business within the State of California.

Significant effect of housing costs: None.

#### **Small Business Determination**

The Department has determined that the proposed regulatory action will not affect small businesses. These

actions only affect TPA, public transportation operators, and transit service providers.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

**Gordon Arruda**  
**Division of Mass Transportation**  
**California Department of Transportation**  
**1120 'N' Street, MS 39, Room 3300**  
**Sacramento, CA 95814**  
**Telephone: (916) 654-9396**

The backup contact person for these inquiries is:

**Tracey Frost**  
**Department of Transportation**  
**Division of Mass Transportation**  
**1120 'N' Street, MS39, Room 3300**  
**Sacramento, CA 95814**  
**Telephone: (916) 654-9842**

Questions on the substance of the regulatory action may be directed to **Mr. Gordon Arruda** or **Tracey Frost**.

Please direct requests for copies of the proposed text (the "express terms") of the regulatory action, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which this rulemaking is based to **Gordon Arruda** at the above address.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during regular business hours. As of the date this notice is published in the Notice Register, the rulemaking file



consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting **Gordon Arruda** at the above address and telephone number.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any requested public hearings and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to **Gordon Arruda** at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting **Gordon Arruda** at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's website at [www.dot.ca.gov/hq/MassTrans/State-TDA/](http://www.dot.ca.gov/hq/MassTrans/State-TDA/).

## TITLE 21. CALIFORNIA DEPARTMENT OF TRANSPORTATION

### NOTICE OF PROPOSED RULEMAKING

The California Department of Transportation (Department) proposes to adopt proposed changes to Title 21, California Code of Regulations — Grade Separation Projects with Section 190 Funding Source, after considering comments, objections and recommendations regarding the proposed action.

### PUBLIC HEARING

Notice of Public hearing to consider regulatory amendments to the Grade Separation Fund allocation requirements will be held at the following:

DATE: September 8, 2008

TIME: 10:00 a.m. — 12:00 p.m.

PLACE: 1120 N Street, Room 1450, Sacramento, CA 95814

At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Information Digest. The Department requests but does not require the persons who make oral comments at the hearing to also submit a written copy of their testimony at the hearing. For individuals with disability accommodation needs, such as sign language interpreters, note takers, reading assistance, or conversion of public hearing materials into Braille, large print or audio format, please contact: Alex Morales, ADA Coordinator at (916) 324-8764. TTY/TDD users may dial 7-1-1 for the California Relay Service. The range of assistive services available may be limited if requests are received less than 10-business days prior to a public hearing.

### WRITTEN COMMENT PERIOD

The public may present written comments, relating to this matter, to the Department. To be considered by the Department, written submissions must be received no later than 5 p.m. on September 8, 2008, and addressed to the following:

Postal Mail — California Department of  
Transportation  
Division of Rail — Railroad  
Crossing Safety Branch  
Attn: Rulemaking Comments  
P.O. Box 942874, MS 74  
Sacramento, CA 94274-0001

Electronic Mail: [Rail.Program@dot.ca.gov](mailto:Rail.Program@dot.ca.gov)

Please be sure the Subject line of the e-mail references "Rulemaking Comments" and that the name and address of the person commenting is included in the e-mail.

Facsimile submissions are to be transmitted and received at the Department's Division of Rail, not later than 5 p.m. on September 8, 2008. The telephone number to FAX is (916) 653-4565.

Following the Public Hearing, the Department may adopt the regulatory language as originally proposed or with modification, if the text, as modified, is sufficiently related to the originally proposed text. If the text is modified, the full regulatory text with modifications

clearly indicated, will be made available to the public for written comment, at least 15 days before it is adopted.

## AUTHORITY AND REFERENCE

Streets and Highways Code Division 3, Chapter 10, section 2455 authorizes the Department to adopt the proposed regulations, which would implement, interpret and make specific section 190 of the Streets and Highways Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

**Sections Affected:** Proposed amendments to Title 21, Division 2, Chapter 13, Article 1, California Code of Regulations (CCR) Sections 1554(d) and 1556.

**Background:** The Grade Separation Program is authorized by Section 190 of the Streets and Highways Code. This competitive grant program currently provides \$15 million each year to local agencies for the construction of grade separations projects. Project eligibility and priority rankings are determined by the California Public Utilities Commission (CPUC). The Department is responsible for administering funding allocations based on the CPUC priority list. Local agencies submit project applications to the CPUC. The CPUC develops a priority list of projects. Local agencies, whose projects are included on that priority list, may submit requests for funding allocations, to the Department.

The local agency must submit documentation in support of, and attest to, specific criteria having been met, in order to be eligible to receive an allocation of funds. The Department then enters into a funding agreement with the local agency for reimbursement of a percentage of the cost to construct the grade separation.

**Proposed Amendments:** Section 1554(d) currently requires the local agency to certify that “. . . all matters prerequisite to the awarding of the construction contract can be accomplished within one year after allocations of the funds. . . .” In order to harmonize the regulation with statutory amendment, the Proposed Amendment would change the requirement to “two years.”

Section 1556 — This regulatory action would amend this section, to conform with statute, to include authority granting the California Transportation Commission (CTC) to “allocate up to \$15 million to a single project, in the current fiscal year, if that project is the highest ranking project on the priority list as established by the CPUC.” This amendment language and authority would not otherwise alter any of the other criteria or conditions under this chapter. Local agencies that re-

quest or receive allocations in excess of \$5 million for a single project would still be ineligible to receive allocations for any other grade separation project, for a period of 10 years. The maximum cumulative allocation for any grade separation project would remain at \$20 million, over a period of not more than five years.

## DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

**Fiscal Effect on Local Government:** The Section 190 program infuses approximately \$15 million each fiscal year which benefits local governments. These changes made in order to reflect legislative amendments do not change the overall amount of funding directed to local government.

**Mandate on local agencies and school districts:** None.

**Cost or Savings to any State agency:** None.

**Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.

**Other nondiscretionary cost or savings imposed on local agencies:** None.

**Cost or savings in federal funding to the State:** None.

**Cost impacts on a representative private person, or business:** The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.

**Adoption of these regulations will not:**

- (1) Create or eliminate jobs within California.
- (2) Create new businesses or eliminate existing businesses within California.
- (3) Affect the expansion of businesses currently doing business within California.

**Significant effect on housing costs:** None.

## Small Business Determination

The Department has determined that the proposed regulations do not affect small businesses. The amended regulations would not change the total amount of funding directed to local governments and, by extension, local construction work.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(12), the Department must de-

termine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to the affected private persons than the proposed action.

The Department has no alternative to making changes required by amendments to authorizing statutes. The Department, however, invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

#### CONTACT PERSON

Inquires concerning the proposed administrative action may be directed to:

Lauren Clauson  
Department of Transportation  
P.O. Box 942874, MS 74  
Sacramento, CA 94274-0001  
(916) 653-0243

The backup contact person for these inquiries is:

Geri Quintana  
Department of Transportation  
P.O. Box 942874, MS 74  
Sacramento, CA 94274-0001  
(916) 654-6077

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, to Lauren Clauson at the address shown above.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Lauren Clauson at the address or phone number listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as de-

scribed in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Lauren Clauson at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Lauren Clauson at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://www.dot.ca.gov/hq/rail/dorwebsite/dorindex.htm>.

### TITLE 24. BUILDING STANDARDS COMMISSION

#### NOTICE OF PROPOSED CHANGES TO BUILDING STANDARDS OF THE CORRECTIONS STANDARDS AUTHORITY

#### REGARDING THE MINIMUM STANDARDS FOR LOCAL DETENTION FACILITIES CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART I, SECTION 13-102 AND PART II, CHAPTER 12, SECTION 1231

#### Minimum Standards for the Design and Construction of Local Detention Facilities

Notice is hereby given that the Corrections Standards Authority (CSA) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part I, Chapter 13, Section 13-102 and Part II, Chapter 12, Section 1231. The CSA is proposing building stan-

dards related to the design and construction of local detention facilities.

### **PUBLIC COMMENT PERIOD**

The California Building Standards Commission on behalf of CSA will hold the following public hearings during which time any person may present statements or arguments relevant to the proposed regulatory action summarized below.

#### **Wednesday, September 3, 2008**

**9:00 a.m.**

Corrections Standards Authority  
660 Bercut Drive  
Sacramento CA 95811

#### **Thursday, September 11, 2008**

**9:00 a.m.**

San Diego Sheriff's Department Headquarters  
9621 Ridgehaven Court  
San Diego CA 92123

Written comments will be accepted by the California Building Standards Commission regarding the proposed changes from July 25, 2008 until 5:00 p.m. on September 8, 2008.

Please address your comments to:

Corrections Standards Authority  
600 Bercut Drive  
Sacramento CA 95811  
Attention: Allison Ganter, Field Representative

Written Comments may also be faxed to (916) 327-3317 or E-mailed to [Allison.ganter@cdcr.ca.gov](mailto:Allison.ganter@cdcr.ca.gov)

### **POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS**

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CSA will accept written comments on the modified building standards during the 15-day period.

**NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.**

### **AUTHORITY AND REFERENCE**

The Corrections Standards Authority proposes to adopt these building standards under the authority granted by Penal Code Section 6030. The purpose of these building standards is to implement, interpret, and make specific the provisions of Penal Code Sections 6029 and 6030. The CSA is proposing this regulatory action based on Penal Code 6030.

### **INFORMATIVE DIGEST**

#### **Summary of Existing Laws**

Sections 6029 and 6030 of the California Penal Code authorize the CSA to establish building standards for local adult and juvenile detention facilities.

#### **Summary of Existing Regulations**

Existing building standards which prescribe requirements for building design and construction of local detention facilities are promulgated by the CSA. These regulations are contained in Title 24, Part 1 and Title 24 Part 2, Volume 1. Further, Appendix Chapter 3A (AC3A), Division II, Title 24, California Building Code regulations have been adopted by the State Fire Marshal and they are frequently referred to as "the State Fire Marshal's Regulations." These regulations apply to both adult and juvenile detention facilities.

#### **Summary of Effect**

The proposed action would update Title 24 Parts 1 and 2, adopting new and revised definitions to add clarity to the regulations, deleting definitions that are no longer relevant, changing the name "Board" and "Board of Corrections" to "Corrections Standards Authority" to reflect legislative change, delete outdated references to State Fire Marshal review of plans and specifications, update code citations, add requirements for responsible sewage system design, correct grammatical errors, revise the requirements for audio monitoring to be required in all secure areas of a detention facility, and revise the requirements regarding weapons being brought into the secure area of a detention facility to be in line with statutory requirements.

#### **Comparable Federal Statute or Regulations**

There are no comparable federal regulations or statutes.

#### **Policy Statement Overview**

The broad objective of the proposed action is to maintain building regulations for local adult detention facilities in conformance with sound correctional practices and to ensure the safe and secure detention of incarcerated persons.



OTHER MATTERS PRESCRIBED BY  
STATUTE APPLICABLE TO THE AGENCY  
OR TO ANY SPECIFIC REGULATION OR  
CLASS OF REGULATIONS

There are no other matters prescribed by statute applicable to the CSA or to any specific regulation or class of regulations.

MANDATE ON LOCAL AGENCIES  
OR SCHOOL DISTRICTS

The CSA has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

(An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the "Economic and Fiscal Impact Statement" (Form 399))

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

Estimate: Not applicable.

INITIAL DETERMINATION OF NO  
SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESSES

(If the agency makes an initial determination that the adoption/amendment/repeal of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect)

The Corrections Standards Authority has made an initial determination that the adoption/amendment/repeal of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

(The declaration the agency shall provide in the record of facts, evidence, documents, testimony, or other evidence that the agency relies upon to support its initial determination of no effect.)

The proposed regulatory action will not affect businesses because the scope of these regulations is specific to the operation of local detention facilities in California.

FINDING OF NECESSITY FOR THE PUBLIC'S  
HEALTH, SAFETY, OR WELFARE

(Any regulation that requires a report shall not apply to businesses, unless the agency makes a finding that it is necessary for the health, safety, or welfare of the public that the regulations apply to businesses.)

The proposed action does not require a report by any business or agency, so the Corrections Standards Authority has not made a finding of necessity for the public health, safety or welfare.

COST IMPACT ON REPRESENTATIVE PRIVATE  
PERSON OR BUSINESS

(Describe all cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. If no cost impact provide the following statement)

The CSA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF EFFECT OF REGULATIONS  
UPON JOBS AND BUSINESS EXPANSION,  
ELIMINATION OR CREATION

The CSA has assessed whether or not and to what extent this proposal will affect the following:

- ☐ The creation or elimination of jobs within the State of California.

The CSA has determined that the proposed regulatory action will not eliminate jobs in the State of California.

- ☐ The creation of new businesses or the elimination of existing businesses within the State of California.

The CSA has determined that the proposed regulatory action will not create or eliminate existing businesses within the State of California.

- ☐ The expansion of businesses currently doing business with the State of California.

The CSA has determined that the proposed regulatory action will not expand businesses currently doing business in the State of California.

**INITIAL DETERMINATION OF SIGNIFICANT  
EFFECT ON HOUSING COSTS**

The Corrections Standards Authority has made an initial determination that this proposal would not have a significant effect on housing costs.

**CONSIDERATION OF ALTERNATIVES**

The CSA has determined that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**AVAILABILITY OF RULEMAKING  
DOCUMENTS**

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

The information may also be located at the Corrections Standards Authority Website:

[http://www.cdcr.ca.gov/Divisions\\_Boards/CSA/](http://www.cdcr.ca.gov/Divisions_Boards/CSA/)

Interested parties may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

**CBSC CONTACT PERSON FOR PROCEDURAL  
AND ADMINISTRATIVE QUESTIONS**

General questions regarding procedural and administrative issues should be addressed to:

**Jane Taylor — Senior Architect**  
**2525 Natomas Park Drive, Suite 130**  
**Sacramento, CA 95833**

**Telephone No.: (916) 263-0916**  
**Facsimile No.: (916) 263-0959**

**PROPOSING STATE AGENCY CONTACT  
PERSON FOR SUBSTANTIVE AND/OR  
TECHNICAL QUESTIONS ON THE PROPOSED  
CHANGES TO BUILDING STANDARDS**

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Allison Ganter, Field Representative  
Corrections Standards Authority  
600 Bercut Drive  
Sacramento CA 95811  
[Allison.ganter@cdcr.ca.gov](mailto:Allison.ganter@cdcr.ca.gov)  
(916) 445-5073

Ron Bertrand, Field Representative  
Corrections Standards Authority  
600 Bercut Drive  
Sacramento CA 95811  
[Ron.bertrand@cdcr.ca.gov](mailto:Ron.bertrand@cdcr.ca.gov)  
(916) 445-5073

<b>GENERAL PUBLIC INTEREST</b>
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**DEPARTMENT OF FISH AND GAME**

Department of Fish and Game —

Public Interest Notice

For Publication July 25, 2008

**CESA CONSISTENCY DETERMINATION  
REQUEST FOR**

**Sherman Island Setback Levee Habitat Project  
Fish Monitoring Program  
Sacramento County  
2080-2008-016-03**

The Department of Fish and Game (Department) received a notice on June 25, 2008, that the Reclamation District No. 341 proposes to rely on a consultation between federal agencies, and on its consultation with a federal agency, to carry out a project that may adversely affect species by the California Endangered Species Act (CESA). The levee project includes contouring of the waterside slope of the new Sherman Island setback levees in order to create an intertidal bench and marsh habitat. The goal of the Sherman Island Setback Levee Project Fish Monitoring Program is to assess native fish use of this newly created aquatic habitat in the Sacramento San Joaquin Delta in Sacramento County, north of the city of Antioch, on the western end of Sherman Is-

land (Project). Project activities may result in impacts to the Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), Spring-run Chinook salmon (*Oncorhynchus tshawytscha*), and delta smelt (*Hypomesus transpacificus*).

The U.S. Fish and Wildlife Service (FWS) issued a “no jeopardy” federal programmatic biological opinion (1-1-07-F-0301)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers (Corps) on September 4, 2007, which considered the effects of the project on the State threatened and Federally threatened delta smelt. The Service issued an amendment to the BO (81420-2008-F-1166-1) to the Corps on March 31, 2008.

The National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS) issued an Incidental Take Permit 1282 (ITP) on May 1, 2007, to Stillwater Sciences, for Reclamation District No. 341, which considered the effects of the project on the State endangered and Federally endangered Winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and Federally threatened and State threatened Spring-run Chinook salmon (*Oncorhynchus tshawytscha*).

Pursuant to California Fish and Game Code Section 2080.1, Reclamation District No. 341 is requesting a determination that the amended BO, ITS, and ITP are consistent with CESA for purposes of the proposed Project. If the Department determines the BO, ITS and ITP are consistent with CESA for the proposed Project, Reclamation District No. 341 will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

## DEPARTMENT OF FISH AND GAME

Department of Fish and Game —

Public Interest Notice

For Publication July 25, 2008  
CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
US-95 Construction Improvements Project  
Riverside County  
2080-2008-017-06

The Department of Fish and Game (Department) received a notice on July 1, 2008 that the California Department of Transportation (Caltrans) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). This project consists of the replacement of existing culverts and installation of concrete spillways at 12 locations of US-95, from Post Mile (PM) 24.5 to PM 32.8, in River-

side County, CA (Project). Project activities may result in temporary and permanent impacts to the desert tortoise (*Gopherus agassizii*).

The US Fish and Wildlife Service (FWS) issued a “no jeopardy” federal biological opinion (BO)(FWS-ERIV-3595.1) and incidental take statement (ITS) to Caltrans (designated as lead agency as per Memorandum of Understanding with the Federal Highway Administration) on January 12, 2006, which considered the effects of the project on the Federally threatened and State threatened desert tortoise.

Pursuant to California Fish and Game Code Section 2080.1, Caltrans is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, Caltrans will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

## PROPOSITION 65

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

California Environmental Protection Agency  
Office of Environmental Health Hazard  
Assessment  
Notice to Interested Parties  
July 25, 2008

### ANNOUNCEMENT OF PUBLIC COMMENT PERIOD

**Draft Technical Support Documents  
On Proposed Public Health Goals for  
Bromate, Lead, Pentachlorophenol, and  
Trichloroethylene  
in Drinking Water**

The Office of Environmental Health Hazard Assessment (OEHHHA) within the California Environmental Protection Agency is announcing the availability of the draft technical support documents for proposed Public Health Goals (PHGs) for bromate, lead, pentachlorophenol, and trichloroethylene in drinking water. The draft document on bromate is a new risk assessment, while the draft documents on the other three chemicals are updates of existing PHGs for these chemicals. The draft documents are posted on the OEHHHA Web site ([www.oehha.ca.gov](http://www.oehha.ca.gov)). OEHHHA is soliciting comments

on the draft reports during a 45-day comment period. The Office will also hold a public workshop on September 11, 2008, at the Elihu Harris Building, 1515 Clay Street, Oakland, 94612, Room 11, 10 a.m.–12 noon, or until business is concluded. OEHHA follows the requirements set forth in Health and Safety Code Sections 57003(a) and 116365 for conducting the workshop and receiving public input.

The workshop is provided to encourage a dialogue between OEHHA scientists and the public, to discuss the scientific basis of the proposed PHGs, and to receive comments. Following the workshop, OEHHA will evaluate all the comments received, revise the documents as appropriate, and make them available for another 30-day comment period. After any subsequent revisions, the final documents will be posted on our Web site along with responses to the major comments from the public at the workshop and during the public review and scientific comment periods.

Oral and written comments received at the workshop will be considered during the revision of the draft technical support documents. Written comments must be received at the OEHHA address below by 5:00 p.m. on September 11, 2008, to be considered during this revision period for the documents.

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996 (codified at Health and Safety Code, section 116270 et seq.), requires OEHHA to develop PHGs based exclusively on public health considerations (Health and Safety Code section 116365(c)). PHGs published by OEHHA are considered by the California Department of Health Services in setting drinking water standards (Maximum Contaminant Levels, or MCLs) as required by Health and Safety Code section 116365(a–b).

If you would like to receive further information on this announcement or have questions, please contact our office at (510) 622–3170 or the address below.

Mr. Michael Baes (mbaes@oehha.ca.gov)  
Pesticide and Environmental Toxicology Branch  
Office of Environmental Health Hazard Assessment  
California Environmental Protection Agency  
1515 Clay St., 16th floor  
Oakland, California 94612

Attention: PHG Project

## RULEMAKING PETITION DECISIONS

### BOARD OF EQUALIZATION

#### NOTICE OF DECISION AS REQUIRED BY GOVERNMENT CODE SECTION 11340.7

On June 20, 2008, the California State Board of Equalization received a petition from Mr. William M. Connell requesting that the Board adopt a Regulation to Designate Qualified Veteran Itinerant Vendors as Consumers of Tangible Personal Property.

Mr. Connell petitioned the Board to adopt a new regulation providing that an itinerant vendor, who is a qualified United States veteran, is the consumer, not the retailer, of goods that the veteran sells.

The Board's authority to adopt regulations interpreting and implementing the Sales and Use Tax Law is found in Revenue and Taxation Code section 7051.

The Board scheduled this matter for hearing on the Chief Counsel Matters agenda at its July 8, 2008 Board meeting. At its July 8, 2008 meeting, the Board voted to continue the petition to October 1–3, 2008 Board meeting. That decision was based on the Board's conclusion that the petition's intent could be satisfied by two bills, AB 1952, and AB 3009, currently being considered by the California Legislature.

A hardcopy of the petition may be requested by contacting Mr. Rick Bennion, P.O. Box 942879, 450 N Street, MIC: 80, Sacramento, CA 94279–0080; Telephone (916) 445–2130; Fax (916) 324–3984; E-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov).

Questions regarding this matter should be directed to Tax Counsel Carla Caruso, Telephone (916) 324–2816, Fax (916) 323–3387, or E-mail [Carla.Caruso@boe.ca.gov](mailto:Carla.Caruso@boe.ca.gov).

### BOARD OF PAROLE HEARINGS

Date: June 20, 2008

To: Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814–4339

ATTN: Melvin Fong

Subject: RESPONSE OF BOARD OF PAROLE  
HEARINGS TO PETITION TO  
AMEND REGULATIONS



NOTICE OF DECISION ON PETITION TO  
AMEND REGULATIONS

**California Code of Regulations (CCR)**  
**Title 15, Crime Prevention and Corrections**  
**Division 2, Board of Parole Hearings**  
(Formerly Board of Prison Terms)

**Petitioner:**

Tai Truong (K-13333)/Lam Nguyen (K-23584) petition<sup>1</sup> to amend title 15 CCR § 2281(d) and § 2402(d) was submitted under Government Code § 11340.6 to the Board of Parole Hearings ("Board"). This response will be published in the California Regulatory Notice Register on July 25, 2008.

**Authority:**

Government Code § 12838.4 vests the Board of Parole Hearings with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the former Board of Prison Terms and Narcotic Addict Evaluation Authority, which no longer exist.

Penal Code § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

**Contact Person:**

Please direct any inquiries regarding this action to Jerome A. Hessick, Staff Counsel, Board of Parole Hearings, by mail at P.O. Box 4036, Sacramento, CA 95812-4036.

**Availability of Petition:**

The petitions for amendment of the regulations are available upon request directed to the Board's contact person.

**Summary of Petition:**

**1: Petitioner requests that the Board amend Title 15 CCR § 2281(d) and § 2402(d), Determination of Suitability — Circumstances Tending to Show Suitability to consider the offender's age at the time of the commitment offense.**

Petitioner states the Department's failure to consider a prisoner's age at the time of the commitment offense as a mitigating factor in determining suitability for parole denies the affected inmates a "fair hearing".

The existing regulations are consistent with applicable law and need not be amended as requested. Age at the time of the commitment offense, if relevant, would already be information considered under existing regulations, Title 15 CCR § 2281(b) and § 2402(b).

The petition is therefore DENIED.

/s/

Martin Hoshino

Executive Officer

Board of Parole Hearings

cc: Petitioners Tai Truong K-13333 and Lam Nguyen K-23584

Brett Morgan, Chief of Staff

D. L. Runnels, Undersecretary, Operations

Donald J. Currier, Assistant Secretary, Office of Legal Affairs

Alberto S. Roldan, Chief Deputy General Counsel, Office of Legal Affairs

Anna Awiszus, Assistant General Counsel, Parole Hearings Team

Jerome Hessick, Staff Counsel, Parole Hearings Team

**OAL REGULATORY  
DETERMINATION**

**OFFICE OF ADMINISTRATIVE LAW**

**DETERMINATION OF ALLEGED  
UNDERGROUND REGULATION  
(Summary Disposition)**

**(Pursuant to Government Code Section 11340.5  
and  
Title 1, section 270, of the  
California Code of Regulations)**

**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION**

Date: July 9, 2008

To: Jaime Zepeda

From: Chapter Two Compliance Unit

Subject: **2008 OAL DETERMINATION NO. 13(S)  
(CTU 2008-0618-03)**

(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation a rule issued by the California Correctional Institution at Tehachapi (CCI)

<sup>1</sup> Mr. Nguyen and Mr. Troung submitted virtually identical petitions. Consequently, the petitions were treated as a single Petition.

requiring the disconnection or removal of speakers from televisions in the Segregated Housing Unit at CCI.

On June 18, 2008, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether the rule you challenge is an underground regulation. The rule is a notation from Property Officer J. Heil on an Inmate/Parolee Appeal Form 602 indicating that televisions delivered without the speakers either removed or disconnected are treated as unauthorized items in the Segregated Housing Unit (SHU) at the California Correctional Institution at Tehachapi (CCI).

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600, which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>1</sup> Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a “regulation” in Government Code section 11342.600<sup>2</sup> is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058 establishes exemptions expressly for the CDCR:

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

<sup>1</sup> Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

<sup>2</sup> “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *In re Garcia* (67 Cal.App.4<sup>th</sup> 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

. . .

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule at issue here applies solely to the inmates of the CCI. It was issued by a Property Officer at CCI. Inmates housed at other institutions are controlled by those other institution’s criteria for allowing televisions with speakers into the SHU. The rule you challenge is issued by the CCI, and applies only to inmates at the CCI. Therefore, the rule is a “local rule” and is exempt from compliance with the APA.<sup>3</sup>

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

Date: July 9, 2008

/s/  
Susan Lapsley  
Director

/s/  
Peggy J. Gibson  
Staff Counsel

<sup>3</sup> For this reason, pursuant to subdivision (f)(2)(E) of section 270, this rule which is included in a statutory exemption is the proper subject of a summary disposition letter. California Code of Regulations, Title 1, section 270, subdivision (f) provides:

(1)(f) If facts presented in the petition or obtained by OAL during its review . . . demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be used to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

**(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.** (Emphasis added.)

**SUSPENSION OF  
ACTION REGARDING  
UNDERGROUND REGULATIONS**

**OFFICE OF ADMINISTRATIVE LAW**

**SUSPENSION OF ACTION REGARDING  
UNDERGROUND REGULATIONS**

**(Pursuant to Title 1, section 280, of the  
California Code of Regulations)**

On December 24, 2008, The Office of Administrative Law (OAL) received a petition challenging Employment Development Department Workforce Investment Act Directive (WIAD05-17) dated May 25, 2005, issued by the Employment Development Department (EDD) as an alleged underground regulation. The WIAD05-17 dealt with the policy and procedures for the resolution of audit findings and disallowed costs applied to subrecipients expending Workforce Investment Act funds.

On July 8, 2008, EDD certified to the OAL that WIAD05-17 had been rescinded; therefore, pursuant to Title 1, section 280 of the California Code of Regulations, OAL must suspend all action on this petition.

**EMPLOYMENT DEVELOPMENT  
DEPARTMENT**

July 1, 2008  
53:130: WIAD05-17  
(916) 654-8410

Ms. Susan Lapsley, Director  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

**Subject: EDD Workforce Investment Act Directive  
WIAD05-17 dated May 25, 2005  
CTU2008-0102-01**

Dear Ms. Lapsley:

This letter is to certify that the Employment Development Department (EDD) will not issue, use, enforce or attempt to enforce any portion of WIAD05-17 to the extent that it does not restate the Workforce Investment Act (WIA) of 1998, OMB Circular A-133 and other laws and regulations that govern the administration of the WIA.

Portions of WIAD05-17 that restate federal laws and regulations will remain in full force and effect.

Please find an attached proof of service confirming that a copy of this certification has been served on the petitioner Mr. John Riess.

Please do not hesitate to contact Sandra Hughes, General Counsel, at (916) 654-8410 if you have further questions.

Sincerely,

/s/

Patrick Henning  
Director

Enclosure

cc: Mr. John K. Riess, Esq. 3579 Lomacitas Lane,  
Bonita, CA 91902

Law Offices of  
John K. Riess 3579  
Lomacitas Lane • Bonita, California 91902  
Tel: (619) 475-0256 • Fax: (619) 470-9269

November 9, 2007

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Dear Gentlemen,

This is a petition challenging an underground regulation. It is submitted under Title 1 Section 260 of the California Code of Regulations.

1. Contact Information:  
John K. Riess  
3579 Lomacitas Lane  
Bonita, CA 91902  
Phone 619 475 02456, Fax 619.470.9269, Cell 619 823 7245
2. The Agency is: Employment Development Department<sup>1</sup>
3. The Underground Regulation being challenged is: Workforce Investment Act Directive No: WIAD05-17 Dated May 25, 2005 (The Directive)
4. This Directive is being used as a "standard" in an audit resolution case with the County of Riverside. While the Directive was not in effect at the time of the EDD representative's visit to Riverside County, it is being used as a standard for the review of the conduct of the Agency in the resolution process. The allegation of error that led to the dispute did not even arise from an audit. The Agency has alleged disallowances of over \$300,000 based on a monitoring visit.

<sup>1</sup> EDD is the "Recipient" as defined in 20 CFR 660.300

5. The Directive applies to many people outside of EDD. In Part I section D., the directive instructs Subrecipients<sup>2</sup> to establish local hearing procedures. It sets standards for the review of a hearing officer decision. “a regulation is an underground regulation if (1) the agency intended it to apply generally rather than in a specific case and (2) the agency adopted it to implement, interpret, or make specific the law enforced by the agency.” (*Excelsior College v Board* (2006) 136 Cal. App. 4<sup>th</sup> 1218 @1239)

Here, this regulation imposes a mandatory duty upon some 56 Subrecipients in the state to set up a hearing process. In fact the entire application of the regulation falls upon those who have funds from EDD and are seeking to resolve an audit or other “determinations” issued by the Agency. This is an underground regulation under *Excelsior*.

This Directive does not fall under the exclusions of 11349 (e) since it applies to both the Agency and the 56 other Subrecipients and imposes duties upon them. Procedures and rules and filing requirements that are more than just the resolution of disputes.

- 6 This issue is of considerable importance to all of the 56 local government agencies and non-profit corporations all of whom receive funds under the Workforce Investment Act Programs. They are being forced to comply with a procedure that has not been adopted as required by law. Procedures that are drafted by one party to the dispute and are not subject to the independent scrutiny of the Administrative Procedures Act.

I certify that the above allegations are true and correct to the best of my personal knowledge.

I, John K. Riess, certify under penalty of perjury under the laws of the state of California that I have submitted a true copy of this petition, with attachments, to the Employment Development Department, Ms. Patricia Cano, Esq., 800 Capitol Mall, Legal Office, Sacramento, CA 95814. Her phone number is: (916) 654 8410. This was done by placing this petition in a postage-prepaid envelope and placing it in the U.S. Mail at Bonita, CA. Dated this 21st day of December 2007.

Sincerely

/s/

John K. Riess

Attorney for Riverside County EDA

## DIRECTIVE

### WORKFORCE INVESTMENT ACT

Number: WIAD05-17

Date: May 25, 2006

69:136:jw:9964

TO: WORKFORCE DEVELOPMENT  
COMMUNITY

SUBJECT: AUDIT RESOLUTION

#### EXECUTIVE SUMMARY:

##### Purpose:

This directive transmits the policy and procedures for the resolution of audit findings and disallowed costs.

##### Scope:

This directive requires that all subrecipients expending Workforce Investment Act (WIA) funds shall comply with federal and State audit resolution requirements.

##### Effective Date:

This directive is effective upon release.

#### REFERENCES:

- Title 20 Code of Federal Regulations (CFR) Sections 667.200(b) and 667.500(a)
- Title 29 CFR Section 95.26
- Title 29 CFR Section 96.53
- Title 29 CFR Section 97.26
- Office of Management and Budget (OMB) Circular A-133, Subject: Audits of States, Local Governments and Non-Profit Organizations (June 24, 1997)

#### STATE-IMPOSED REQUIREMENTS:

This directive contains State-imposed requirements in ***bold, italic*** type.

#### FILING INSTRUCTIONS:

This directive supersedes WIA Directive WIAD01-3, dated July 31, 2001, and finalizes WIA Draft Directive WIADD-116, issued for comment on April 18, 2006. The Workforce Investment Division received no comments during the draft comment period. Retain this directive until further notice.

#### BACKGROUND:

Entities receiving awards of WIA funds must meet the audit requirements of OMB Circular A-133. Title 20 CFR Section 667.200(b)(2)(ii) requires that commercial organizations that expend more than \$500,000 of federal funds have either an organization-wide audit conducted in accordance with OMB Circular A-133 or a program specific financial and compliance audit. These regulations require the establishment of procedures for audit resolution.

<sup>2</sup> A Subrecipient is defined in 20 CFR Sect 660.300 as “an entity to which is awarded and which is accountable to the recipient (or higher tier subrecipient). . .



The procedures apply to State resolution of subrecipient audits and to subrecipient resolution of their subrecipients' audits. In addition, the Compliance Review Division (CRD) may use these procedures in resolving the findings from other reviews, such as incident and investigation reports, and monitoring. The CRD is responsible for State-level audit resolution and coordination of State-level hearings. Address mail as follows:

Compliance Resolution Unit  
Compliance Review Division, MIC 22M  
Employment Development Department  
P.O. Box 826880  
Sacramento, CA 94280-0001

## POLICY AND PROCEDURES:

### Definitions:

**Auditee**, as defined in OMB Circular A-133, is a nonfederal entity that expends federal awards that must be audited under the circular.

**Awarding agency** means (1) with respect to a grant, Department of Labor; and (2) with respect to a subgrant or contract, the party that awarded the subgrant or contract.

**Federal award** means federal financial assistance and federal cost-reimbursement contracts. It includes federal awards made directly by federal awarding agencies or indirectly by recipients of federal awards or subrecipients. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Federal financial assistance means assistance received or administered to carry out a program.

**Initial Determination** is a preliminary decision on whether to allow or disallow questioned costs and resolve any nonmonetary findings.

**Final Determination** is the awarding agency's final decision to disallow the cost and the status of nonmonetary findings.

**Nonmonetary finding** is an administrative finding.

**Subrecipient**, in this directive, refers to local areas, lower-tier subrecipients, and subgrantees.

### Policy:

Subrecipients that award WIA funds to their subrecipients must have written audit resolution policies and procedures. For subrecipients, audit resolution consists of a three-part process that includes the Initial Determination, informal resolution period, and the Final Determination. Receipt of the Initial and Final Determinations by the auditee must be documented by the awarding agency.

### Procedures:

#### I. Subrecipient Standards

##### A. Subrecipients must:

1. Review the audit report of their subrecipients to ensure compliance with the requirements of OMB Circular A-133.
2. ***Establish an audit resolution file to document the disposition of reported questioned costs and corrective actions taken for all findings.***
3. ***Complete a control log.*** (The log must contain the date of the audit, the period covered by the audit, the date that the audit was received, the auditor, the questioned costs, the administrative findings, the date or dates of the Initial and Final Determinations, and documentation of decisions regarding the disallowed costs and administrative findings.)
4. Issue a letter of Initial Determination based on the audit review. The Initial Determination letter includes:
  - A list of all questioned costs.
  - Whether the costs are allowed or disallowed, including the reasons with appropriate citations for such actions.
  - Acceptance or rejection of any corrective action taken to date, including corrective action on administrative findings.
  - Possible sanctions.
  - The opportunity for informal resolution of no more than 60 days from the date of Initial Determination.
5. During informal resolution, the auditee may provide documentation to support allowability of costs and proposed corrective action of administrative findings. Informal resolution discussions may be held by telephone, if necessary, but in person is preferable. When a meeting is held, provide a sign-in sheet. ***The sign-in sheet must be retained as part of the audit file. The meeting must be documented either with a voice recording or written notes.*** Negotiations of repayments can be initiated at this time.
6. Issue a written Final Determination. The Final Determination includes:
  - Reference to the Initial Determination.
  - Summation of the informal resolution meeting, if held.
  - Decisions regarding the disallowed costs, listing each disallowed cost and noting the reasons for each disallowance.

- Questioned costs that have been allowed by the awarding agency and the basis for the allowance.
  - Demand for repayment of the disallowed costs.
  - Description of the debt collection process and other sanctions that may be imposed if payment is not received.
  - Rights to a hearing.
  - The status of each administrative finding.
- B. The audit resolution process must be completed within six months after receipt of the subrecipient's audit report and must ensure that the subrecipient takes appropriate and timely corrective action.
- C. ***The audit file must be assembled for ease of reference in the event of future action. The file must be tabulated with the most current documentation first. The file should include the following:***
- Final Determination and proof of receipt by the subrecipient.
  - Additional documentation submitted as part of the informal resolution process:
    - Notes related to the informal resolution.
    - Sign-in sheets from any informal resolution meetings.
  - Initial Determination and proof of receipt by the subrecipient.
  - Response to the final audit report.
  - Final audit report.
- D. ***Subrecipients must establish local-level hearing procedures. The awarding agency must reserve the right to overturn a hearing officer's decision when it determines that noncompliance with the applicable act or its regulations still exists.***
- The hearing allows both parties the right to present either written or oral testimony, call and question witnesses in support of their position, present oral and written arguments, examine records and documents relevant to the issues, and be represented. ***The hearing shall be recorded mechanically or by court reporter.***
- The auditee has 30 calendar days after the Final Determination is issued to submit a written request for a hearing. At least 10 calendar days before the hearing, written notice of the date and site of the hearing must be provided to the auditee.*** The 10-day notice may be shortened with written consent of both parties. The auditee may

withdraw the hearing request; ***the withdrawal request must be submitted in writing.***

***The hearing officer must issue a decision within 60 days of the request filing date.***

***An auditee has 10 days from receipt of the adverse decision to file an appeal of the local hearing officer's adverse decision to the State Review Panel. If a local hearing is not held or the decision is not rendered timely, the auditee has 15 days from the date on which the hearing should have been held or the decision should have been issued to file an appeal with the State Review Panel.***

- E. ***If the auditee appeals the decision of the awarding agency's hearing officer to the State, the awarding agency will send Compliance Review Division (CRD) the complete audit for review by the State Review Panel.*** Within 30 days of receipt by the CRD of the auditee's written appeal, the State Review Panel will be convened to review all evidence and issue a decision based on the evidence without consideration of any imposed sanctions.

There is no administrative appeal beyond this level.

- F. ***The awarding agency shall ensure correction of any unresolved administrative findings.*** The awarding agency should determine the status of the unresolved administrative findings through its monitoring process and determine that appropriate corrective action has been taken. ***A copy of the monitoring report substantiating the implementation of the appropriate corrective action must be filed with the audit report.***

## II. State Audit Resolution

- A. If there are no audit findings, the CRD will notify the auditee that no further action will be taken regarding the audit.
- B. If the audit identifies an administrative finding, questioned costs, or cost recommended for disallowance, the CRD will:
- Establish an audit resolution file to document the disposition of each finding and the corrective action taken to resolve each finding.
  - Issue a written notice of Initial Determination after the audit is reviewed.
  - Provide the auditee an opportunity for informal resolution and submission of additional documents within 60 days from the date of the notice of Initial Determination to resolve questioned costs and/or administrative findings.

- Issue a written notice of Final Determination.

### III. State Hearings

*All appeals of State audit determinations, including amendments and withdrawals, shall be in writing. Requests for hearings must be made within 30 days from the date of the Final Determination.*

The State hearing officer will provide written notice to the concerned parties of the date, time, and place of the hearing at least 10 calendar days before the scheduled hearing. Both parties will have the opportunity to present oral and written testimony, call and question witnesses in support of their position, present oral and written arguments, examine records and documents relevant to the issue(s), and be represented. The State hearing officer will prepare a proposed decision and submit it to the Employment Development Department (EDD) Director or designee. The EDD reserves the right to overturn the decision of the hearing officer.

*There is no administrative appeal beyond this level.*

### IV. Stand-In Costs

During the audit resolution process, the auditee may propose the use of stand-in costs to substitute for the disallowed costs. To be considered, stand-in costs must be incurred for allowable WIA costs that were reported as uncharged WIA program costs, included within the scope of the audit, and accounted for in the auditee's financial system. The stand-in cost must have been expended in support of the same title and program year as the costs they propose to replace, and the costs must not cause a violation of the cost limitations and requirements. Stand-in costs must be actual expenses paid with nonfederal funds. Cash match in excess of the required match may also be considered for use as stand-in costs.

#### **ACTION:**

Bring this directive to the attention of all affected staff and subrecipients.

#### **INQUIRIES:**

If you have any questions, please contact your Regional Advisor at (916) 654-7799.

/S/ BOB HERMSMEIER  
Chief  
Workforce Investment Division

## AVAILABILITY OF INDEX OF PRECEDENTIAL DECISIONS

### EDUCATION AUDIT APPEALS PANEL

Notice of Availability of Precedential Decision Index  
(Government Code Section 11425.60)

*Notice is hereby given* that the Education Audit Appeals Panel (EAAP) maintains an index of the determinations made in the only decision EAAP has so far designated as precedential. The index is available on the Internet at <http://www.eaap.ca.gov>, following the text of the "Appeals" section.

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-0702-01  
BOARD OF EQUALIZATION  
Rules for Tax Appeals

These nonsubstantive changes correct typographical errors contained in a recent rulemaking and correct the section number in one reference citation.

Title 18  
California Code of Regulations  
AMEND: 5216, 5310, 5311, 5326.4, 5326.6, 5333, 5333.4, 5333.6, 5523.4  
Filed 07/16/2008  
Agency Contact: Rick Bennion (916) 445-2130

File# 2008-0528-07  
CALIFORNIA HORSE RACING BOARD  
Occupational Licenses and Fees

This rulemaking action amends the California Horse Racing Board's regulations to provide for the licensing of "Stable Name Groups." It further provides for vari-

ous matters concerning their licensure, including but not limited to, the setting of a registration fee at \$300, and who may register stable name groups. Section 1784 requires the disclosure of the “real” names of all partnerships or ownership interests participating in the stable name group and the percentage of ownership interest of each. Those with ownership interests of 10% or less would not need to be licensed as owners, but would require registration as part of the stable name group.

**Title 4**

California Code of Regulations

AMEND: 1481, 1783, 1784

Filed 07/10/2008

Effective 08/09/2008

Agency Contact: Harold Coburn (916) 263-6397

File# 2008-0530-03

**CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE****MES Standards — Record Keeping**

This regulatory action requires grantee institutions to maintain specified records that concern CIRM-funded research activities and to make these records available at CIRM's request.

**Title 17**

California Code of Regulations

ADOPT: 100120

Filed 07/14/2008

Effective 08/13/2008

Agency Contact: C. Scott Tocher (415) 396-9136

File# 2008-0530-01

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY****California Capital Access Program for Small Bus.**

This is the certification of compliance for an emergency action that updated and clarified the regulations that prescribe the standards for the Capital Access Program for Small Businesses.

**Title 4**

California Code of Regulations

AMEND: 8070, 8072, 8073

Filed 07/14/2008

Effective 07/14/2008

Agency Contact: Aaron Todd (916) 654-5740

File# 2008-0625-03

**CORRECTIONS STANDARDS AUTHORITY****2007 Local Jail Construction Funding**

This emergency action readopts the Corrections Standards Authority's regulations implementing the 1.2 billion dollar 2007 Local Jail Construction Program authorized by AB 900 (Chap. 7, Stats. 2007). This

emergency action is the first readoption under Penal Code section 5058.3 certification of operational necessity. The prior OAL emergency file number readopted here is 2008-0118-03EON.

**Title 15**

California Code of Regulations

ADOPT: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.5, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1756, 1757, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792

Filed 07/14/2008

Effective 07/14/2008

Agency Contact:

Charlene Aboytes (916) 324-1914

File# 2008-0603-08

**DEPARTMENT OF DEVELOPMENTAL SERVICES  
Respite Care Rate Increase**

This regulatory action increases the maximum reimbursement rate for in-home respite workers and respite facilities providing respite services to \$10.71 per consumer per hour, effective January 1, 2008. These changes are intended to reflect the increase in the maximum rates of reimbursement appropriated for in the Governor's Budget for Fiscal Year 2007-2008 for respite services.

**Title 17**

California Code of Regulations

AMEND: 57310, 57332

Filed 07/14/2008

Effective 07/14/2008

Agency Contact: Mayra Jimenez (916) 654-1608

File# 2008-0527-02

**DEPARTMENT OF FOOD AND AGRICULTURE  
Light Brown Apple Moth Interior Quarantine**

This is the certification of five emergency files (07-1214-01; 08-0125-03; 08-0206-02; 08-0219-02; and, 08-0304-01). It continues quarantine areas with respect to the light brown apple moth (*Epiphyas postvittana*) in the counties of Contra Costa, Santa Clara, San Mateo, San Francisco, Marin, and Alameda.

**Title 3**

California Code of Regulations

AMEND: 3434(b)

Filed 07/09/2008

Effective 07/09/2008

Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0710-01

**DEPARTMENT OF FOOD AND AGRICULTURE  
Light Brown Apple Moth Interior Quarantine**

This emergency amendment will expand the regulated area in the Monterey and Santa Cruz counties by



approximately eighteen square miles with respect to the light brown apple moth (LBAM; *Epiphyas postvittana*) pursuant to the finding of new pests and the established protocol.

Title 3  
California Code of Regulations  
AMEND: 3434(b)  
Filed 07/11/2008  
Effective 07/11/2008  
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0603-05  
DEPARTMENT OF FOOD AND AGRICULTURE  
South American Spongeplant Eradication Area

In this regulatory action, the Department of Food and Agriculture amends its regulation pertaining to the "South American Spongeplant Eradication Area" to add the County of Merced to the eradication area subject to means and methods for the eradication of the pest South American Spongeplant.

Title 3  
California Code of Regulations  
AMEND: 3963  
Filed 07/14/2008  
Effective 08/13/2008  
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0603-03  
DEPARTMENT OF FOOD AND AGRICULTURE  
Oak Mortality Disease Control

This action is the Certificate of Compliance filing making permanent the prior emergency addition of five new plants of the magnolia species to the list of host plants subject to the Oak Mortality Disease Control regulation.

Title 3  
California Code of Regulations  
AMEND: 3700  
Filed 07/16/2008  
Effective 07/16/2008  
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0603-04  
DEPARTMENT OF FOOD AND AGRICULTURE  
Mediterranean Fruit Fly Interior Quarantine

This action is the Certificate of Compliance filing making permanent the prior emergency addition of approximately six square miles to the northern boundary of the existing Mediterranean Fruit Fly quarantine area in the Rolling Hills area of Los Angeles County.

Title 3  
California Code of Regulations  
AMEND: 3406  
Filed 07/16/2008  
Effective 07/16/2008  
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0604-03  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
HCD Manufactured Housing Definitions

This change without regulatory effect conforms to definitions of "mobilehome," "manufactured home," and "multifamily manufactured home" as defined by SB 538 (Chapter 540 of 2007).

Title 25  
California Code of Regulations  
AMEND: 2002, 4004, 5002, 5511  
Filed 07/14/2008  
Agency Contact: Alicia Murillo

File# 2008-0703-01  
DEPARTMENT OF INSURANCE  
Repeal of 10 CCR 2191

This rulemaking repeals title 10 section 2191. The statutory authority for this section was repealed effective January 1, 1999.

Title 10  
California Code of Regulations  
REPEAL: 2191  
Filed 07/10/2008  
Effective 07/10/2008  
Agency Contact: Drake Shogun (916) 492-3535

File# 2008-0623-01  
DEPARTMENT OF MENTAL HEALTH  
Authorization for Out-of-Plan Services

These new regulations and one amendment to Title 9 set forth definitions of "County of Origin" and "Host County" for purposes of amending the existing Authorization of Out-of-Plan Services regulation. The amendment provides time deadlines for providing authorization or requesting additional information when a county provides specialty mental health services to foster children or children being assisted with adoption services. The time deadlines are particularly important if the child is receiving services in a county that is not financially responsible for the child (e.g. if one county has legal jurisdiction over the child, but the child is receiving mental health services in another county).

**Title 9**

California Code of Regulations

ADOPT: 1810.207.5, 1810.220.5 AMEND:  
1830.220

Filed 07/11/2008

Effective 08/10/2008

Agency Contact: Susan R. Ichiho (916) 654-1393

File# 2008-0612-01

**DEPARTMENT OF MOTOR VEHICLES****Occupational Licensing and Disciplinary Guidelines**

This regulatory action is to update the Occupational Licensing and Disciplinary Guidelines, which is an incorporated by reference document. These guidelines are being amended to reflect changes in law and to make other formatting, grammatical and organizational changes. The amendments clarify terms and revise the applicability of specified crimes to occupational licenses.

**Title 13**

California Code of Regulations

AMEND: 440.04

Filed 07/15/2008

Effective 08/14/2008

Agency Contact: Erik Meyer (916) 657-8954

File# 2008-0602-01

**DEPARTMENT OF PARKS AND RECREATION****Recreational Trails Program**

This action adopts provisions governing the recreational trails program by requiring compliance with the incorporated "Procedural Guide for the federal Recreational Trails Program, Final June 4, 2007." This action is the resubmittal filing of previously withdrawn OAL file number 2008-0114-01S.

**Title 14**

California Code of Regulations

ADOPT: 4860

Filed 07/15/2008

Effective 08/14/2008

Agency Contact: Debra Gonzales (916) 654-1618

File# 2008-0530-02

**DEPARTMENT OF SOCIAL SERVICES****Family Connections for Foster Youth, Foster Care Provider Training**

This rulemaking action adopts and amends regulations to incorporate anti-discrimination provisions which protect children in foster care and foster care license applicants. The rulemaking also adds provisions requiring facilitation of contact between children in fos-

ter care and siblings, extended family members, and other significant persons. The rulemaking strengthens training requirements for foster care service providers and adds a requirement that someone trained in First Aid and CPR is always present in a foster home when the child is present. The rulemaking also adds disclosure requirements for foster care license applicants and requires foster family agencies to do reference checks on applicants seeking to become licensed.

**Title 22, MPP**

California Code of Regulations

ADOPT: 88054, 89318 AMEND: 80017, 83017,  
83064, 83075, 84065, 84068.2, 84090, 84165,  
84265, 86065, 86068.2, 86517, 88001, 88022,  
88031, 88065.3, 88068.2, 88069.7, 89317, 89378,  
89405

Filed 07/09/2008

Effective 08/08/2008

Agency Contact: Sandra Ortega (916) 657-3174

File# 2008-0616-01

**FAIR POLITICAL PRACTICES COMMISSION****Reporting and Valuation of Gifts: Air Transportation**

This action by the Fair Political Practices Commission adopts section 18946.6 in Title 2 of the California Code of Regulations setting forth the reporting and valuation requirements of air transportation as gifts to public officials.

**Title 2**

California Code of Regulations

ADOPT: 18946.6

Filed 07/16/2008

Effective 08/15/2008

Agency Contact:

Virginia Latteri-Lopez (916) 324-3854

File# 2008-0528-09

**MANAGED RISK MEDICAL INSURANCE BOARD****AB 203 Deletion of HFP to Medi-Cal Bridge**

This certificate of compliance filing is the companion to file 2008-0528-10C establishing two measures to limit enrollment in the Healthy Families Program (HFP). This action amends Title 10, section 2699.6611 based upon AB 203 (Chapter 188, Statutes of 2007). AB 203 directs that the Healthy Families to Medi-Cal Bridge benefits that have been provided to children enrolled in the HFP be discontinued when it is determined at the annual eligibility review that the child's household income is below HFP eligibility requirements and the child appears eligible for full-scope Medi-Cal.

Title 10  
California Code of Regulations  
AMEND: 2699.6611  
Filed 07/10/2008  
Effective 07/10/2008  
Agency Contact: Randi Turner (916) 327-8243

File# 2008-0617-01  
OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD  
Replace Graphics

This change without regulatory effect replaces graphics of slope configurations to improve the quality of the illustrations.

Title 8  
California Code of Regulations  
AMEND: Appendix B following 1541.1  
Filed 07/14/2008  
Agency Contact: Marley Hart (916) 274-5721

File# 2008-0609-03  
STATE ALLOCATION BOARD  
Leroy F. Greene Sch. Facilities Act of 1998; General Site Development

This Certificate of Compliance filing makes permanent the amendments to Title 2, California Code of Regulations Sections 1859.77(d)(3), 1859.83(a)(2), (b)(3)(A)-(b)(4), and (d)(5)-(d)(6) filed as an emergency and operative March 3, 2008. The emergency and permanent regulatory amendments change the expiration date of subsection (d) of section 1859.76 of title 2 of the California Code of Regulations from January 1, 2008 to January 1, 2009, pertaining to new construction site development costs under the School Facility Program so as to enable completion of school facility construction and improvement projects. The rulemaking also makes permanent the emergency amendments clarifying the funding formula computation.

Title 2  
California Code of Regulations  
AMEND: 1859.76, 1859.83, 1859.104.3  
Filed 07/10/2008  
Effective 07/10/2008  
Agency Contact: Robert Young (916) 445-0083

File# 2008-0528-02  
STATE ALLOCATION BOARD  
Leroy F. Greene School Facilities Act of 1998; Project Information worksheet

This action implements the possibility of an increment or decrease in a school construction grant based upon a change in the cost of new construction, as authorized by Education Code section 17072.11, by requiring

school districts receiving funds for construction to report cost related information to the Board on the Project Information Worksheet.

Title 2  
California Code of Regulations  
AMEND: 1859.71  
Filed 07/10/2008  
Effective 07/10/2008  
Agency Contact: Robert Young (916) 445-0083

File# 2008-0606-01  
STRUCTURAL PEST CONTROL BOARD  
Structural Integrated Pest Management

This regulatory action defines the term structural integrated pest management (IPM) and intervention to allow the Board to proceed with the adoption of IPM educational requirements for licensees and applicants.

Title 16  
California Code of Regulations  
ADOPT: 1984  
Filed 07/09/2008  
Effective 08/08/2008  
Agency Contact: Ryan Vaughn (916) 561-8730

File# 2008-0604-02  
SUPERINTENDENT OF PUBLIC INSTRUCTION  
Child Care and Development Programs — Desired Results

This action affecting Child Care and Development Programs changes the interval for updating a child's development profile using the Desired Results Development Profile form.

Title 5  
California Code of Regulations  
AMEND: 18272  
Filed 07/16/2008  
Effective 08/15/2008  
Agency Contact: Connie Diaz (916) 319-0860

### CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN FEBRUARY 13, 2008 TO JULY 16, 2008

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 1**  
04/24/08 AMEND: Appendix A

02/25/08	ADOPT: 48, 50, 52 AMEND: 55	06/23/08	AMEND: 3591.5(a)
<b>Title 2</b>		06/17/08	AMEND: 2751
07/16/08	ADOPT: 18946.6	06/16/08	AMEND: 3434(b)
07/10/08	AMEND: 1859.76, 1859.83, 1859.104.3	06/11/08	AMEND: 3434(b)
07/10/08	AMEND: 1859.71	06/09/08	AMEND: 3700
07/08/08	AMEND: 2271	06/04/08	AMEND: 3434(b)
06/26/08	AMEND: 554.2, 554.3	05/23/08	AMEND: 3434(b)
06/17/08	ADOPT: div. 8, ch. 112, sec. 59570	05/23/08	AMEND: 1438.7, 1438.17
06/11/08	AMEND: 18360, 18361	05/07/08	AMEND: 3434(b)
06/11/08	ADOPT: 18421.7 AMEND: 18401	05/05/08	AMEND: 3406(b)
06/11/08	ADOPT: 18944.2 REPEAL: 18944.2	05/02/08	AMEND: 3417(b)
05/21/08	ADOPT: 59580	05/02/08	AMEND: 3434
05/14/08	ADOPT: 18413	04/30/08	AMEND: 3591.20
05/13/08	ADOPT: 59620	04/23/08	AMEND: 6550
05/06/08	AMEND: 43000, 43001, 43002, 43003, 43004, 43005, 43006, 43007, 43008, 43009	04/21/08	AMEND: 3700
04/30/08	AMEND: 1859.2, 1859.61, 1859.81, 1859.82, 1859.83, 1859.202, 1866, Form SAB 50-04 (Rev. 01/08)	04/18/08	AMEND: 3434(b)
04/29/08	ADOPT: 1859.190, 1859.191, 1859.192, 1859.193, 1859.193.1, 1859.194, 1859.195, 1859.196, 1859.197, 1859.198, 1859.199 AMEND: 1859.2, 1859.51, 1859.81, Form SAB 50-04 (Revised 01/08), Form SAB 50-05 (Revised 01/08), Form SAB 50-10 (Revised 01/08)	04/16/08	AMEND: 3434(b) & (c)
04/24/08	ADOPT: 1183.081, 1183.131, 1183.30, 1183.31, 1183.32 AMEND: 1181.1, 1181.2, 1181.3, 1183, 1183.01, 1183.04, 1183.08, 1183.11, 1183.13, 1183.14, 1183.3, 1188.3	04/15/08	AMEND: 3433(b)
04/10/08	AMEND: 1866, 1866.4.3, 1866.13, Form SAB 40-22 (Rev. 10/07)	04/08/08	AMEND: 3434(b)
04/09/08	AMEND: 18997	04/02/08	AMEND: 3433(b)
03/28/08	ADOPT: 59630	04/02/08	AMEND: 3433(b)
03/24/08	AMEND: 18735	04/01/08	ADOPT: 821, 821.1, 821.2, 821.3, 821.4, 821.5 REPEAL: 784, 784.1, 784.2, 800, 800.1, 801, 802
03/19/08	AMEND: 55300	03/26/08	AMEND: 3434(b)
03/19/08	AMEND: 549.90	03/21/08	AMEND: 3434(b)
03/19/08	AMEND: 18200	03/19/08	AMEND: 6620
03/03/08	AMEND: 1859.76, 1859.83, 1859.104.3	03/17/08	AMEND: 3434(b)
02/25/08	AMEND: 549.80	03/17/08	AMEND: 3406(b)
02/25/08	AMEND: 714	03/17/08	AMEND: 3700(c)
<b>Title 3</b>		03/13/08	AMEND: 6860
07/16/08	AMEND: 3700	03/12/08	AMEND: 3434(b)
07/16/08	AMEND: 3406	03/12/08	AMEND: 3406(b)
07/14/08	AMEND: 3963	03/05/08	AMEND: 3875
07/11/08	AMEND: 3434(b)	03/04/08	AMEND: 3867
07/09/08	AMEND: 3434(b)	03/03/08	AMEND: 3591.20
06/30/08	AMEND: 3589(a)	02/22/08	AMEND: 3434(b)
06/24/08	AMEND: 3963	02/21/08	AMEND: 6393
06/24/08	AMEND: 3060.3	<b>Title 4</b>	
		07/14/08	AMEND: 8070, 8072, 8073
		07/10/08	AMEND: 1481, 1783, 1784
		06/24/08	ADOPT: 12335, 12340, 12357 AMEND: 12342, 12343, 12344, 12345, 12358, 12359
		05/23/08	ADOPT: 1843.3 AMEND: 1843.2
		05/01/08	AMEND: 1844
		04/08/08	AMEND: 1467
		03/24/08	AMEND: 10177, 10178, 10181, 10182, 10187, 10188, 10189
		02/29/08	ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND:



	8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101	05/19/08 AMEND: 797, 1604.10, 1601.21, 1662 05/05/08 ADOPT: 2340.2, 2340.5, 2340.8, 2340.10, 2340.12, 2340.14; Article 6, Sections 2360.1 through 2360.5; Sections 2375.7, 2375.25, 2380.1, 2390.10, 2390.20, Article 12, Sections 2400.1, 2400.2; Sections 2418.2, 2418.3, 2418.4, 2418.5, 2418.6, 2420.4, 2420.5, 2420.6, 2420.7, 2473.1, 2473.2, 2480.5, 2480.9, 2484.5, 2484.6; Article 48.1, Sections 2485.1, 2485.2; Sections 2505.2, 2510.8, 2522.20, 2530.120, 2530.121; Article 58.1, Section 2535.1; Sections 2540.11, 2540.11 Figure S-1, 2560.3; Article 74.1, Sections 2562.1 through 2562.7; Article 77.1, Sections 2566.1 through 2566.3; Article 77.2, Sections 2567.1 through 2567.3; Sections 2569.5, 2571.9, 2571.30; Article 83, Sections 2583.1 through 2583.8; Article 84, Sections 2584.1 through 2584.8; Article 85, Sections 2585.1 through 2585.3; Article 86, Sections 2586.1 through 2586.4; Article 87, Sections 2587.1 through 2587.5; Article 88, Sections 2588.1 through 2588.3; Article 89, Sections 2589.1 and 2589.2. AMEND: 2300, 2305.2, 2305.4, 2340.9, 2340.11, 2340.13, 2340.16, Table 2340.16, 2340.17, 2340.18, 2340.21, 2340.22; Article 5, Section 2350.2; Sections 2375.1, 2375.18, Table 2375.18, Sections 2375.19, 2390.1, 2390.24, 2390.41, 2390.81, 2395.3, 2395.5, 2395.6, 2395.23, 2395.25, 2395.32, 2395.42, 2395.44, 2395.45, 2395.57, 2395.58, 2405.1, 2405.2; Article 16, Sections 2420.3; Article 45; Sections 2480.6, 2480.7, 2484.24, 2500.7, 2500.8, 2500.9, 2500.10, 2500.11, 2500.23, 2505.10, 2505.11, 2510.4, 2510.5, 2510.6, 2510.7, 2510.56, 2510.58, 2522.2, 2530.4, 2530.102, 2530.103, 2530.104, 2530.107, 2530.112, 2533.1, 2534.6, 2534.8, 2540.1, 2540.2, 2540.3, 2540.4, 2560.2, 2561.1, 2561.3, 2561.31, 2561.32, 2563.23, 2563.33; Article 77, Section 2565.3; Sections 2568.8, 2568.15, 2569.1, 2569.6, 2569.7, 2569.20, 2569.51; Article 80, Sections 2571.1 and 2571.16. REPEAL: 2340.23, 2350.11, 2390.83, 2395.7, 2395.33,
<b>Title 5</b>		
07/16/08	AMEND: 18272	
06/24/08	AMEND: 80021	
06/19/08	AMEND: 4600(I)	
06/13/08	ADOPT: 55185, 57017 AMEND: 55180, 57001.7, 58003.4, 58770, 58771, 58774	
06/10/08	AMEND: 30910, 30911, 30912, 30913, 30914, 30916	
06/10/08	AMEND: 30920, 30921, 30922, 30923, 30924, 30925, 30927	
06/09/08	ADOPT: 19828.3, 19837.2 AMEND: 19816, 19816.1, 19828.2, 19837.1, 19846	
05/28/08	ADOPT: 18085.5, 18086.1 AMEND: 18086, 18087, 18088, 18091, 18101, 18102, 18104	
05/21/08	ADOPT: 6105 AMEND: 6100, 6104	
05/13/08	AMEND: 15440, 15441, 15442, 15443, 15444, 15445, 15446, 15447, 15448, 15449, 15450, 15451, 15452, 15453, 15454, 15455, 15456, 15457, 15458, 15459, 15460, 15461, 15462, 15463, 15464, 15467, 15468, 15469, 15471, 15471.1, 15471.2, 15472, 15473, 15474, 15475, 15476, 15477, 15478, 15479, 15479.5, 15480, 15481, 15483, 15484, 15485, 15486, 15487, 15488, 15489, 15490, 15493	
05/05/08	ADOPT: 11315.5 and 11315.6 AMEND: 11315	
05/01/08	AMEND: 80440, 80443	
04/21/08	ADOPT: 18134	
04/21/08	ADOPT: 18134	
03/03/08	ADOPT: 9510.5, 9512, 9513, 9514, 9525 AMEND: 9510, 9511, 9515, 9516, 9517, 9518, 9519, 9521, 9522, 9523, 9524, 9527, 9528, 9529, 9530 REPEAL: 9517.1, 9520	
02/28/08	ADOPT: 11969.10, 11969.11 AMEND: 11969.1, 11969.2, 11969.3, 11969.4, 11969.6, 11969.7, 11969.8, 11969.9	
02/25/08	AMEND: 41301	
02/22/08	AMEND: 3051.16, 3065	
<b>Title 7</b>		
06/10/08	ADOPT: 236.1	
<b>Title 8</b>		
07/14/08	AMEND: Appendix B following 1541.1	
06/30/08	ADOPT: 4300.1 AMEND: 4297, 4300	
06/06/08	AMEND: 1710(k)(2)	
05/19/08	AMEND: 1529, 5208, 8358	
05/19/08	AMEND: 1710	

	2395.43, 2395.50, 2480.8, 2522.8and 2561.50.	06/24/08	ADOPT: 2232.45.1, 2232.45.2, 2232.45.3, 2232.45.4, 2232.45.5 AMEND: 2536.2
04/11/08	AMEND: 7016(c)		
04/07/08	AMEND: 10116, 10116.1, 10117.1, 10118.1, 10119, 10120, 10121, 10136, 10137, 10225, 10225.1, 10225.2	06/16/08	AMEND: 2318.6, 2353.1
		06/02/08	ADOPT: 10.190202
04/01/08	ADOPT: 3140, 3141, 3141.1, 3141.2, 3141.3, 3141.4, 3141.5, 3141.6, 3141.7, 3141.8, 3141.9, 3141.10, 3141.11, 3141.12, 3141.13, 3142, 3142.1, 3142.2, 3143, 3144, 3145, 3146 AMEND: 3000, 3001, 3009, 3094.2, 3120.6, 3137	05/27/08	AMEND: 2249.2-2249.9, 2249.12, 2249.15
03/05/08	AMEND: 1504, 1597	05/16/08	ADOPT: 2642.8, 2644.28 AMEND: 2642.6, 2642.7, 2644.2, 2644.3, 2644.6, 2644.7, 2644.8, 2644.12, 2644.16, 2644.17, 2644.19, 2644.20, 2644.21, 2644.23, 2644.25, 2644.27
03/05/08	AMEND: 3228	04/30/08	AMEND: 2697.6, 2697.61
02/29/08	AMEND: 3270	04/29/08	ADOPT: 10.19900, 10.19901
		04/28/08	AMEND: 310.111
<b>Title 9</b>		03/27/08	AMEND: 2699.6500, 2699.6805, 2699.6803
07/11/08	ADOPT: 1810.207.5, 1810.220.5 AMEND: 1830.220	03/20/08	AMEND: 1950.314.8
07/02/08	AMEND: 9515(d), 10522(b)	03/18/08	AMEND: 2498.6
03/06/08	AMEND: 10025, 10057, 10515, 10518, 10524, 10545, 10550, 10606, 11014, 11017, 11024, 13070	03/12/08	ADOPT: 2699.402 AMEND: 2699.100, 2699.205, 2699.6600, 2699.6607, 2699.6608, 2699.6613, 2699.6625, 2699.6629, 2699.6813
02/28/08	ADOPT: 7024.9, 7025.4, 7136.4, 7136.5, 7136.6, 7136.7, 7136.8, 7136.9, 7137, 7138, 7179.4, 7179.5 REPEAL: 7136.5	03/06/08	AMEND: 260.241, 260.241.2 REPEAL: 260.218.5, 260.241.1
02/13/08	ADOPT: 3100, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.225, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3410, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 REPEAL: 3100, 3200.000, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3310, 3400, 3405, 3410, 3415	02/22/08	ADOPT: 2695.20, 2695.21, 2695.22, 2695.23, 2695.24, 2695.25, 2695.26, 2695.27, 2695.28
		02/14/08	ADOPT: 2790.8, 2790.9
		<b>Title 11</b>	
		07/08/08	ADOPT: 30.14
		06/17/08	AMEND: 1005, 1007, 1008, 1080
		05/28/08	AMEND: 2000, 2001, 2010, 2020, 2030, 2037, 2038, 2050, 2051, 2052, 2053, 2060, 2070, 2071, 2072, 2140
		04/14/08	AMEND: 1081
		02/29/08	AMEND: 1009, 1070, 1071, 1082, 1083
		<b>Title 13</b>	
		07/15/08	AMEND: 440.04
		06/16/08	ADOPT: 156.01
		06/16/08	AMEND: 1961, 1965
		06/10/08	AMEND: 2222
		06/02/08	AMEND: 1141
		05/16/08	ADOPT: 2449, 2449.1, 2449.2, 2449.3
		05/01/08	AMEND: 1
		04/28/08	AMEND: 120.00, 120.01, 120.02, 124.93, 124.95 REPEAL: 120.04
		04/10/08	AMEND: 1202.1, 1202.2, 1232
		04/07/08	AMEND: 2451, 2452, 2453, 2458, 2461
		03/07/08	AMEND: 345.02, 345.06, 345.21, 345.22
		03/04/08	AMEND: 2485
		<b>Title 13, 17</b>	
		07/02/08	AMEND: 2299.1, 93118
<b>Title 10</b>			
07/10/08	REPEAL: 2191		
07/10/08	AMEND: 2699.6611		
07/07/08	ADOPT: 2699.6602, 2699.6604 AMEND: 2699.6603, 2699.6605, 2699.6607, 2699.6608, 2699.6611, 2699.6625		

**Title 14**

07/15/08 ADOPT: 4860  
 07/08/08 ADOPT: 124.1 AMEND: 122, 125, 149.1, 150, 150.02, 150.03, 150.05, 163, 163.5, 164, 174, 180.3  
 07/02/08 AMEND: 7.50  
 07/01/08 AMEND: 27.80  
 06/30/08 AMEND: 120.7  
 06/23/08 AMEND: 18660.23, 18660.24, 18660.25, 18660.33, 18660.34  
 06/20/08 AMEND: 360, 361, 362, 363, 364, 551, 708, 712  
 06/18/08 ADOPT: 355  
 06/16/08 AMEND: 10602, 10800  
 05/15/08 AMEND: 353, 475  
 05/09/08 AMEND: 27.20, 27.25, 27.30, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57, 28.58  
 05/02/08 AMEND: 825.05  
 04/28/08 ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5  
 04/28/08 AMEND: 815.05  
 04/25/08 AMEND: 17210.2, 17210.4, 17855.2, 17862, 17867  
 04/07/08 AMEND: 228(b)(1)  
 04/04/08 AMEND: 27.80  
 03/26/08 AMEND: 630  
 03/14/08 ADOPT: 13255.1 AMEND: 13055, 13111, 13169, 13255.0, 13255.1, 13255.2, 13576  
 03/14/08 ADOPT: 5.79, 5.88, 29.16, 29.91 AMEND: 1.74, 5.80, 5.81, 5.87, 27.90, 27.91, 27.92, 29.15, 29.90, 701  
 03/13/08 AMEND: 671  
 03/10/08 ADOPT: 18218, 18218.1, 18218.2, 18218.3, 18218.4, 18218.5, 18218.6, 18218.7, 18218.8, 18218.9  
 02/28/08 AMEND: 17211.1, 17211.4, 17211.7, 17211.9  
 02/28/08 ADOPT: 749.3  
 02/19/08 AMEND: 7.50  
 02/13/08 ADOPT: 704

**Title 15**

07/14/08 ADOPT: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.5, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1756, 1757, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792  
 07/08/08 ADOPT: 3334 AMEND: 3000  
 06/23/08 ADOPT: 2275  
 06/04/08 AMEND: 3190, 3191  
 05/23/08 ADOPT: 1417 AMEND: 1029, 1206, 1248, 1357, 1358, 1461

04/18/08 AMEND: 3291, 3293  
 04/07/08 AMEND: 3173.2  
 03/27/08 ADOPT: 2536.1  
 03/18/08 ADOPT: 3269 AMEND: 3315  
 03/18/08 ADOPT: 3486 AMEND: 3482, 3484, 3485  
 03/06/08 ADOPT: 3355.2 AMEND: 3030, 3050, 3268.2, 3355, 3355.1  
 02/25/08 ADOPT: 3075.4 AMEND: 3000

**Title 16**

07/09/08 ADOPT: 1984  
 07/08/08 AMEND: 1399.540  
 07/03/08 AMEND: 1568  
 07/02/08 AMEND: 390, 390.1, 390.3, 390.4, 390.5, 390.6 REPEAL: 390.2  
 06/30/08 ADOPT: 119.7  
 06/26/08 AMEND: 109, 116  
 06/17/08 ADOPT: 4580  
 06/16/08 ADOPT: 4400, 4402, 4404, 4406, 4420, 4422, 4424, 4426, 4428, 4500, 4520, 4522, 4540, 4542, 4560, 4562  
 06/11/08 REPEAL: 1399.664  
 06/04/08 AMEND: 931  
 05/21/08 AMEND: 4141  
 05/20/08 AMEND: 905  
 05/19/08 ADOPT: 4440, 4442, 4443, 4444, 4446, 4448, 4450, 4452, 4470, 4472, 4474, 4476, 4478, 4480, 4482, 4484  
 05/16/08 AMEND: 1399.696, 1399.697  
 05/12/08 AMEND: 1399.523  
 05/08/08 REPEAL: 3300  
 05/07/08 ADOPT: 1364.32 AMEND: 1364.30  
 05/02/08 AMEND: 1079.2  
 04/29/08 AMEND: 1970, 1970.4(a), 1973(b)  
 04/24/08 AMEND: 1387.3  
 04/24/08 AMEND: 3000  
 04/17/08 AMEND: 1399.660  
 04/16/08 ADOPT: 973, 973.1, 973.2, 973.3, 973.4, 973.5, 973.6  
 04/14/08 AMEND: 1380.1  
 04/10/08 AMEND: 4123  
 04/01/08 AMEND: 1381.5, 1388, 1388.6, 1392  
 03/26/08 AMEND: 3065  
 03/24/08 AMEND: 974  
 03/18/08 AMEND: 1399.651  
 03/12/08 AMEND: 1435.2  
 02/19/08 AMEND: 1887.2, 1887.3  
 02/15/08 AMEND: 30, 95, 95.2, 95.6

**Title 17**

07/14/08 AMEND: 57310, 57332  
 07/14/08 ADOPT: 100120  
 07/08/08 AMEND: 95005  
 07/02/08 AMEND: 2299.1, 93118

06/12/08 ADOPT: 94016, 94168 AMEND: 94010, 94011  
 05/30/08 AMEND: 100080, 100085, 100090, 100100  
 04/30/08 ADOPT: 35004, 35005.1, 35031, 35088, 36050 AMEND: 35001, 35002, 35003, 35005, 35006, 35007, 35008, 35009, 35010, 35012, 35013, 35014, 35015, 35016, 35018, 35019, 35020, 35021, 35022, 35025, 35026, 35027, 35028, 35029, 35030, 35032, 35033, 35034, 35035, 35036, 35037, 35038, 35039, 35040, 35041, 35042, 35043, 35044, 35045, 35046, 35047, 35048, 35049, 35050, 35051, 35052, 35053, 35054, 35055, 35056, 35057, 35061, 35065, 35066, 35067, 35070, 35072, 35076, 35078, 35080, 35081, 35082, 35083, 35085, 35087, 35089, 35091, 35093, 35095, 35096, 35097, 35099, 36000, 36100 REPEAL: 35023  
 04/21/08 AMEND: 54355  
 04/21/08 AMEND: 93115.4, 93115.6, 93115.10  
 04/18/08 ADOPT: 93120, 93120.1, 93120.2, 93120.3, 93120.4, 93120.5, 93120.6, 93120.7, 93120.8, 93120.9, 93120.10, 93120.11, 93120.12  
 04/11/08 ADOPT: 30333.05, 30333.07, 30333.3, 30335.1, 30335.2, 30335.3, 30335.4, 30335.5, 30335.6, 30335.10, 30336.1, 30336.5, 30336.6, 30336.7, 30336.8, 30338 AMEND: 30195.3, 30295, 30330, 30331, 30332, 30332.1, 30332.2, 30332.3, 30332.4, 30332.5, 30332.6, 30332.7, 30332.8, 30333, 30333.1, 30333.2, 30334, 30336, 30337 REPEAL: 30335  
 04/03/08 AMEND: 6508  
 04/02/08 AMEND: 93119  
 04/02/08 AMEND: 93119  
 03/17/08 ADOPT: 100700  
 03/10/08 ADOPT: 30704, 30712, 30713 AMEND: 30700, 30701, 30702, 30703, 30710, 30711, 30714, 30720, 30721, 30722, 30723, 30730, 30735, 30736, 30740, 30741, 30750, 30751, 30752, 30753 REPEAL: 30715, 30724, 30734.1  
 03/04/08 ADOPT: 100400, 100401, 100402, 100403, 100404, 100405, 100406, 100407, 100408, 100409, 100410  
 02/19/08 AMEND: 70100.1, 70200  
 02/14/08 ADOPT: 30410, 30410.2 AMEND: 30421, 30424, 30445, 30447  
 02/13/08 AMEND: 2500, 2502

**Title 18**

07/16/08 AMEND: 5216, 5310, 5311, 5326.4, 5326.6, 5333, 5333.4, 5333.6, 5523.4  
 06/23/08 AMEND: 19503  
 06/10/08 ADOPT: 2558, 2559, 2559.1, 2559.3, 2559.5  
 06/04/08 AMEND: 23038(b)-2, 23038(b)-3  
 04/29/08 AMEND: 25137(c)(1)(D)  
 04/23/08 AMEND: 1620  
 04/10/08 AMEND: 1570

**Title 19**

06/06/08 AMEND: 200, 203, 204, 206, 207, 208, 209, 211, 212, 214, 215, 216, 217  
 04/23/08 ADOPT: 2660 AMEND: 2720, 2723, 2724, 2725, 2726, 2728  
 02/20/08 AMEND: Division 2, Chapter 4, Article 4, Section 2729.2 and Appendices A I, II, III and Appendices B I, II, III

**Title 20**

05/20/08 AMEND: 2323(a), 2323(b), 2323(c), 2323(d), 2323(e), 2323(f), 2325(a), 2329(c), 2329(e), 2330(a), 2332(d), 2333(a), 2335(b)  
 04/15/08 ADOPT: 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, Appendix A

**Title 21**

06/30/08 ADOPT: 111, 112, 113, 114, 121, 131, 132, 133, 134, 135, 136, 141, 151, 152, 153  
 02/15/08 AMEND: 1575

**Title 22**

06/26/08 AMEND: 100140, 100141, 100163, 100172, 100174  
 06/23/08 AMEND: 12805  
 06/17/08 ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503, 25504, 25505, 25601, 25701, 25703, 25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026, 28027, 28028, 28029, 28030, 28031, 28032, 28033, 28034, 28035, 25036, 28037, 28038, 28039, 28040 REPEAL: 12000, 12102, 12103, 12104, 12201,



	12203, 12204, 12301, 12302, 12303, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12505, 12601, 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, 12821, 12900, 12901, 12902, 12903, 14000, 15001, 15002, 15003, 15004, 15006, 15007, 15008, 15009, 15010, 15011, 15012, 15013, 15014, 15015, 15016, 15017, 15018, 15019, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032, 15033, 15034, 15035, 15036, 15037, 15038, 15039, 15040		87236, 87340, 87342, 87342.1, 87343, 87344, 87345, 87346, 87451, 87452, 87453, 87454, 87455, 87455.1, 87457, 87458, 87560, 87561, 87562, 87564, 87564.2, 87564.3, 87564.4, 87564.5, 87565, 87566, 87567, 87568, 87569, 87570, 87571, 87572, 87573, 87574, 87575, 87575.1, 87575.2, 87576, 87577, 87578, 87579, 87580, 87581, 87582, 87583, 87583.1, 87584, 87585, 87586, 87587, 87588, 87589, 87590, 87591, 87592, 87593, 87686, 87689, 87690, 87691, 87692, 87700, 87701, 87701.1, 87701.2, 87701.3, 87701.5, 87702, 87702.1, 87703, 87704, 87705, 87706, 87707, 87708, 87709, 87710, 87711, 87713, 87716, 87716.1, 87720, 87721, 87722, 87724, 87725, 87725.1, 87730, 87730.1, 87730.2, 87731, 87731.1, 87731.2, 87731.3, 87731.4, 87755, 87756, 87757, 87758, 87759, 87761, 87763, 87766, 87768, 87769, 87775, 87777, 87785, 87786, 87787, 87788, 87789, 87791, 87792, 87793 REPEAL: 87725.2
05/08/08	ADOPT: 66260.201 AMEND: 66260.10, 66261.9, 66273.1, 66273.3, 66273.6, 66273.8, 66273.9, 66273.12, 66273.13, 66273.14, 66273.20, 66273.32, 66273.33, 66273.34, 66273.40, 66273.51, 66273.53, 66273.56, 66273.82, 66273.83, 66273.90, Appendix X to Chapter 11		
05/06/08	ADOPT: 72038, 72077.1, 72329.1 AMEND: 72077, 72329		
04/18/08	AMEND: 4410 REPEAL: 4410.5	<b>Title 22, 27</b>	
04/15/08	AMEND: 50960.2, 50960.4, 50960.6, 50960.9, 50960.12, 50960.15, 50960.21, 50960.23, 50960.26, 50960.29, 50960.32, 50960.34, 50960.36, 50962, 50963, 50964, 50965, 50966	07/07/08	AMEND: Title 22, 67450.11; Title 27, Div. 3, subd. 1, Chapter 4C. and Chapter 6
03/27/08	AMEND: 12705(b)	<b>Title 23</b>	
03/18/08	AMEND: 12000	07/01/08	AMEND: 3935
03/03/08	AMEND: 926-3, 926-4, 926-5	06/27/08	ADOPT: 3949.5
02/28/08	AMEND: 51000.3, 51000.30, 51000.50	06/26/08	ADOPT: 2918
<b>Title 22, MPP</b>		05/13/08	ADOPT: 3919.3
07/09/08	ADOPT: 88054, 89318 AMEND: 80017, 83017, 83064, 83075, 84065, 84068.2, 84090, 84165, 84265, 86065, 86068.2, 86517, 88001, 88022, 88031, 88065.3, 88068.2, 88069.7, 89317, 89378, 89405	05/12/08	AMEND: 3947
07/09/08	ADOPT: 88054, 89318 AMEND: 80017, 83017, 83064, 83075, 84065, 84068.2, 84090, 84165, 84265, 86065, 86068.2, 86517, 88001, 88022, 88031, 88065.3, 88068.2, 88069.7, 89317, 89378, 89405	05/12/08	AMEND: 3939.22
06/30/08	AMEND: 63-300, 63-504, 63-505, 63-601	03/10/08	ADOPT: 3919.2
03/05/08	AMEND: 87101, 87102, 87106, 87107, 87110, 87111, 87112, 87113, 87114, 87115, 87116, 87117, 87118, 87218, 87219, 87219.1, 87220, 87222, 87223, 87224, 87225, 87226, 87227, 87227.1, 87228, 87229, 87230, 87231, 87235,	02/28/08	ADOPT: 3919.1
		<b>Title 25</b>	
		07/14/08	AMEND: 2002, 4004, 5002, 5511
		04/02/08	ADOPT: 7201, 7205, 7205.1, 7205.2, 7205.3, 7206, 7207, 7209, 7211, 7215, 7225, 7231 AMEND: 7200, 7202, 7204, 7206 (renumbered to 7209.5), 7208, 7210, 7212, 7218 (renumbered to 7217), 7220, 7222, 7224, 7226, 7228, 7230, 7232, 7234, 7239 (renumbered to 7201) REPEAL: 7214, 7216
		04/01/08	AMEND: 6932
		<b>Title 27</b>	
		06/17/08	ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503,

25504, 25505, 25601, 25701, 25703, 25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026, 28027, 28028, 28029, 28030, 28031, 28032, 28033, 28034, 28035, 25036, 28037, 28038, 28039, 28040 REPEAL: 12000, 12102, 12103, 12104, 12201, 12203, 12204, 12301, 12302, 12303, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12505, 12601, 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, 12821, 12900, 12901, 12902, 12903, 14000, 15001, 15002, 15003, 15004, 15006, 15007, 15008, 15009, 15010, 15011, 15012, 15013, 15014, 15015, 15016, 15017, 15018, 15019, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032,		15033, 15034, 15035, 15036, 15037, 15038, 15039, 15040 03/21/08 AMEND: 15100, 15110, 15140, 15150, 15160, 15170, 15185, 15186, 15187, 15187.1, 15190, 15200, 15210, 15220, 15230, 15240, 15241, 15250, 15260, 15280, 15290, 15300, 15310, 15330, 15400.2, 15600 02/25/08 ADOPT: 21815 AMEND: 21780, 21790, 21800, 21820, 21825, 21830, 21840, 21865, 22234, 22240, 22243, 22244, 22246, 22247, 22248, 22249, 22249.5, 22251, 22252, 22253, Division 2 — Appendix 3 <b>Title MPP</b> 06/30/08 AMEND: 63–300, 63–504, 63–505, 63–601 06/30/08 AMEND: 42–721, 42–780, 44–303, 44–307, 44–318, 82–812 06/26/08 ADOPT: 40–037, 70–101, 70–102, 70–103, 70–104, 70–105 AMEND: 30–755, 30–770, 40–105, 42–430, 42–431, 42–433, 42–711, 49–020, 49–030, 49–060, 63–403, 69–201, 69–202, 69–205 06/04/08 AMEND: 63–301
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